WESTERN WASHINGTON DIGEST OF DECISIONS

DIGEST OF DECISIONS

180 DAYS

A motion for reconsideration may not be filed after an order granting extension of time. That order does not qualify as a final decision under WAC 242-02-832(1). *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)

Where new ordinances were adopted during the PFR process and the time for filing challenges to the new ordinances has not expired, a GMHB will issue a FDO on the ordinances that have been challenged and disregard the new ordinances in order to fulfill the statutory duty of a GMHB to rule on properly presented PFR issues. A GMHB has no authority to extend the 180-day deadline for filing a FDO unless the parties stipulate to an extension for settlement purposes. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)

Where the parties have previously stipulated to an extension of time for issuance of a FDO and as part of that extension order a date was fixed for the time of issuance of a new request for extension and no such request was made the case is dismissed. *Carlson v. San Juan County* 99-2-0008 (MO 2-29-00)

Under the provisions of RCW 36.70A.300 a GMHB must issue a written decision within 180 days of the filing of the petition. The only exemption from that requirement is for the purpose of facilitating settlement under the provisions of subsection (2)(b). No other delay in the issuance of a FDO is authorized. *Vines v. Jefferson County* 98-2-0018 (MO 2-12-99)

ABANDONED ISSUES

An issue not addressed in petitioner's brief is considered abandoned. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

When petitioners choose not to argue an issue in their brief it is considered to be abandoned. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

ADOPTION – *SEE* SEQUENCING

ACCESSORY DWELLING UNITS (ADU)

A county may request a "clarification" of a previously issued determination of invalidity under RCW 36.70A.302(6). A FDO dated 11-30-00 which included a determination of invalidity was perspective only and did not affect vested permits. Additionally, it was not the intention of the order to prohibit a single-family residence from being built on a lot where an existing guesthouse was already permitted or had been built. *Friday Harbor v. San Juan County* 99-2-0010 (MO 4-6-01)

Allowance of a second "guesthouse" as an ADU on every SFR lot in designated rural lands and/or RLs without any analysis of the density impact substantially interferes with the goals of the Act and is determined to be invalid. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)

RCW 36.70A.400 requires a county to comply with RCW 43.63A.215(3). Thus, the CTED recommendations for "development and placement of accessory apartments" submitted to the 1993 Legislature must be incorporated, subject to limitations for local flexibility as determined by the local legislative authority. *Friday Harbor v. San Juan County* 99-2-0010 (RO 8-25-99)

A tiering concept along with significant up-zones that authorize multi-family housing in single family residential districts and manufactured homes in single family residential districts, and that provide for 200 additional acres for multi-family use in addition to allowing accessory dwelling units throughout the city, complies with the GMA. *Eldridge v. Port Townsend* 96-2-0029 (FDO 2-5-97)

AFFORDABLE HOUSING

Under the record in this case, the County has complied with the goals and requirements of the Act as to affordable housing. A GMHB does not have authority to direct a local government to fund affordable housing policies and requirements. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A clustering ordinance which prohibits urban service standards, involves very limited numbers in sizing of clusters, requires affordable housing and applies only to limited areas outside of UGAs complies with the Act. RCW 36.70A.070(5)(b) authorizes a county to permit rural development through clustering to accommodate appropriate rural densities. The provisions of .070(5)(c) for containment, visual compatibility and reduction of low-density sprawl applies to such clusters. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A CP policy regarding affordable housing must be specific and must be implemented by DRs to comply with the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

A county's change in the previous definition of "family," which was consistent with the adoption of the CTED model ADU ordinance, complied with the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

The allowance of a guesthouse as an ADU to satisfy affordable housing requirements does not comply with the GMA in the absence of any analysis of existing conditions, projections of future guesthouse needs and the potential cost of public facilities and services. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

An affordable housing element is not a requirement of the GMA at the time of establishing IUGAs. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

A tiering concept along with significant up-zones that authorize multi-family housing in single family residential districts and manufactured homes in single family residential districts, and that provide for 200 additional acres for multi-family use in addition to allowing accessory dwelling units throughout the city, complies with the GMA. *Eldridge v. Port Townsend* 96-2-0029 (FDO 2-5-97)

A rural lands policy in a CP which encourages expansion of urban clusters, virtually assuring the need for urban infrastructure and services, is not a method of providing affordable housing throughout the county. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

Urban density goals and requirements of the GMA relate primarily to anti-sprawl and compact development. They do not, in and of themselves, address affordable housing goals and requirements. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

The purpose of a CP requirement for the county and all of its cities to impose a 60% single family to 40% multiple family ratio is to comply with affordable housing and infill goals and requirements of the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

AGRICULTURAL LANDS – *SEE* NATURAL RESOURCE LANDS

AIRPORTS

A county must ensure that notification regarding siting of general aviation airports reaches beyond residents living within 1,000 feet from any point on a proposed landing area. *Yanisch, et al. v. Lewis County*, 02-2-0007c (FDO 12-11-02)

A county is not compliant with GMA requirements regarding siting of general aviation airports if it fails to preclude non-compatible uses within the final approach areas. *Klein v. San Juan County,* 02-2-0008 (FDO 10-18-02)

A residential zone within airport property does not comply with RCW 36.70A.200(5). *CCARE v. Anacortes* 01-2-0019 (FDO 12-12-01)

A local government may not preclude the siting of EPFs. Siting includes use or expansion of airport facilities for airport uses. *CCARE v. Anacortes* 01-2-0019 (FDO 12-12-01) & *Desmoines v. CPSGMHB* 98 Wn. App. 23 (1999)

An airport is an EPF under the definition found in RCW 36.70A.200. *CCARE v. Anacortes* 01-2-0019 (FDO 12-12-01)

RCW 36.70A.510 requires a local government to adopt land use policies and DRs that preclude incompatible land uses adjacent to airports. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

An airport is an essential public facility under the definition of RCW 36.70A.200(1). *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The requirement that a local government may not preclude the siting of EPFs under RCW 36.70A.200(2) involves a duty to maintain current airport facilities. DRs are appropriate vehicles to prevent encroachments on surrounding airport property that make siting and maintenance of existing airports difficult. Residential designation of surrounding properties is usually inappropriate. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

ALLOCATION OF POPULATION

While the sizing of the UGAs was compliant, the resulting densities were woefully inadequate to satisfy the GMA requirement to achieve urban growth within UGAs. A county does comply with its own CPPs nor with the GMA when it directs more than 50 % of the allotted population projection to rural areas. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A county has the responsibility under the GMA of providing for regional coordination and the sole responsibility for allocation of population projections. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

A town may not unilaterally reduce the county-assigned allocation of population. *Moore-Clark v. La Conner* 94-2-0021 (FDO 5-11-95)

A city has discretion to allocate its future population through a variety of densities provided that a proper analysis, and compliance with GMA goals and requirements, is achieved. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

AMENDMENT

1. CP Amendment

A PFR which challenges a CP amendment is not moot even if a concomitant rezone is granted by the City and is unchallenged by petitioners. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)

A CP amendment which replaces low-density residential housing with mixed use commercial on an 85-acre tract of land encourages urban type development in an area characterized by "very low-density residential development." The city's decision to infill needed mixed use commercial rather than requesting expansion of the UGA is in harmony with the anti-sprawl goals of the CP and the Act. *Downey v. Ferndale* 01-2-0011 (FDO 8-17-01)

RCW 36.70A.470 prohibits the use of the "permitting process" for land use planning decisions. The stature requires the maintenance of an annual docketing list of proposed amendments to the CP or DRs. *Downey v. Ferndale* 01-2-0011 (FDO 8-17-01)

The legislative scheme of the Act with regard to .040 and .130 requires that DR amendments go through the same annual review process as CP amendments. An "automatic" amendment to DRs upon approval of a specific permit application does not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

An ordinance which merely schedules the CP amendment processes does not comply with the requirements of RCW 36.70A.130. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

RCW 36.70A.040(3)(d) in conjunction with RCW 36.70A.130 establishes a requirement that implementing DRs must be amended as a result of amendments to the CP. *Birchwood v. Whatcom County* 98-2-0025 (MO 3-18-99)

A full CP amendment process is required by the GMA for any designation changes. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

Once the CP and implementing DRs are adopted they direct where growth will be allowed, giving a level of predictability and consistency to property owners, rather than their being left to the whim of changing elected officials and staff. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

RCW 36.70A.130(2)(a) provides that proposed amendments to the CP may not be considered more frequently than once every year except in limited circumstances. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

The repeal of a CP prior to its effective date does not constitute an amendment and thus does not violate RCW 36.70A.130. *Ellis v. San Juan County* 97-2-0006 (FDO 6-19-97)

The purpose of RCW 36.70A.130 directing that all amendments be adopted on an annual basis is to place such proposed amendments before local government at one specific time so the cumulative affect of the proposals can be ascertained. *Ellis v. San Juan County* 97-2-0006 (FDO 6-19-97)

Where an initial CP action was taken and not challenged within the 60-day time limit provided in the GMA, a GMHB does not have jurisdiction to review the alleged failure to adopt an amendment because of an alleged deficiency of the original action. *Quail v. Vancouver* 97-2-0005 (MO 5-6-97)

When a CP amendment concerning RLs is adopted a local government has an obligation under RCW 36.70A.060(3) to ensure consistency between the implementing DRs and the plan amendment. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

An agricultural overlay amendment adopted in conjunction with readoption of the land use map created an issue of inconsistency which was timely appealed. *Hudson v. Clallam County* 96-2-0031 (MO 3-21-97)

The GMA does not allow a party to use an amendment to the CP as a vehicle to challenge other portions of the plan not affected by the amendment. *Hudson v. Clallam County* 96-2-0031 (MO 3-21-97)

No CP will be the best it can be on its original adoption. Improvements and clarifications will always need to be made throughout the amendment process over the life of a 20-year plan. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

2. DR Amendment

RCW 36.70A.470 prohibits the use of the "permitting process" for land use planning decisions. The stature requires the maintenance of an annual docketing list of proposed amendments to the CP or DRs. *Downey v. Ferndale* 01-2-0011 (FDO 8-17-01)

The legislative scheme of the Act with regard to .040 and .130 requires that DR amendments go through the same annual review process as CP amendments. An "automatic" amendment to DRs upon approval of a specific permit application does not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Where a county adopts a position that for many years that interlocal agreements adequately substituted for DRs to accomplish the purpose of transformance of governance, it cannot now complain that it does not have the ability to amend those interlocal agreements in order to achieve compliance. *FOSC v. Skagit County* 00-2-0050c (RO 3-5-01)

It is part of the responsibility of a GMHB to look carefully at any DR or amendment for clarity. *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

A change to a DR must be consistent with and implement the CP. RCW 36.70A.130(1). *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

RCW 36.70A.130 requires that any amendments to DRs shall be consistent with and implement the CP. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

Where a threshold determination was required for an amendment to a DR and none took place, an ordinance was void. The entire process must begin again at the point where the initial SEPA review was required. *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94)

An amendment to a CAO that occurs prior to the adoption of a CP and implementing DRs requires full compliance with all aspects of the GMA. *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94)

Under the Whatcom County Code a referendum challenging a previously adopted CAO is considered an amendment to that regulation. *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94)

3. PFR

WAC 242-02-260 allows amendment of a PFR, but such shall not be freely granted. A showing of hardship by a nonmoving party is sufficient grounds for denial. *TRG v. Oak Harbor* 96-2-0002 (MO 5-9-96)

AMICUS CURIAE

Where intervention is not approved, the granting of *amicus curiae* status involving written briefs only is appropriate. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

Where the requirements for intervention are not met, a GMHB may authorize *amicus curiae* under the provisions of WAC 242-02-280. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)

Where no objection to *amicus curiae* status is received, participation will be granted but will be limited to submission of a written brief. *OEC v. Jefferson County* 94-2-0017 (MO 11-30-94)

Where there is no objection to the granting of *amicus curiae* status and the motion demonstrates that *amicus* status should be granted, participation will be limited to a written brief. *Berschauer v. Tumwater* 94-2-0002 (MO 3-16-94)

ANNEXATION

A CP and DRs must reflect a clear statement that new growth will be encouraged within UGAs. Adding new commercial industrial areas in the rural portion of the county and amendment of a CP to add additional annexation requirements for lands within municipal UGAs does not comply with the Act. Within municipal UGAs annexations must be appropriately planned and must occur. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

APPEAL TO COURT

Where previous FDOs have been affirmed in Superior Court and an appeal has been filed in those cases, the newest compliance order and FDO, which involved many of the same arguments, satisfy the criteria of RCW 34.05.518(3) and a certificate of appealability is issued. *Panesko v. Lewis County* 00-2-0031 (MO 6-28-01)

A GMHB retains jurisdiction over noncompliant actions regardless of and independent of any appeals that are filed, absent an order from the court of jurisdiction. *FOSC v. Skagit County 96-2-0025* (MO 3-8-01)

Filing a motion for reconsideration of a FDO is not necessary to obtain judicial review. RCW 34.05.470(5). *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)

Once an appeal to court has been made a GMHB loses jurisdiction over the issues relating to the court appeal for reconsideration purposes. *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)

A decision regarding motions for reconsideration becomes the FDO for purposes of court appeal. *Wells v. Whatcom County* 97-2-0030 (RO 2-17-98)

A GMHB does not participate in a court appeal except for jurisdictional and procedural issues. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

Where no appeal to court was taken from a FDO of noncompliance, a GMHB will not reverse that decision through a request for reconsideration of a compliance order entered some 13 months later. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

ARCHEOLOGY

RCW 36.70A.020(13) directs that local governments (1) identify and (2) encourage preservation of archeologically significant lands, sites and structures. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

In order to comply with the GMA, a local government must adopt an identification process for known and potential archeological sites. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

AVERAGE NET DENSITY

In determining a rural density, statistical averaging of existing and projected average lot sizes has value primarily as a starting point for the analysis. Five-acre lots are often a guideline to showing a rural density, but are not a bright line determination. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

Because of regionality within the counties and cities of the WWGMHB jurisdiction, it is impossible to establish a standard average density per acre or other mathematical baseline to determine compliance with the GMA in the sizing or location of IUGAs. The establishment of a proper IUGA is not simply an accounting exercise. Cities and counties are afforded discretion under the GMA to make choices about accommodating growth. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

BEST AVAILABLE SCIENCE (BAS)

A county which has considered the best available science and adopted less stringent protection standards that balance the need for protection of potable water supplies against the chilling effect of regulation against development has complied with the GMA only if the county also adopts a monitoring strategy that includes stricter development regulations that will be implemented at once if the less stringent protection standards prove to be inadequate to protect against seawater intrusion. *Olympic Environmental Council, et al. v. Jefferson County,* 01-2-0015 (CO 12-4-02)

The use of a 35-foot buffer in Type 1 waters under SMP designations "suburban" and "urban" areas continue to substantially interfere with the goals of the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Buffer width requirements for Type 1 waters involving minor new development establishing a 150 foot width in "natural" areas, a 75 foot width in "conservancy" areas and a 50 foot width in "rural" areas removes substantial interference. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area to 20,000 square feet removed substantial interference as to minor new development in Type 2, 3, and 4 waters. However, the county's failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Under the record and BAS in this case the county complied with the Act by removing an inconsistency in definitional criteria for Type 1-5 waters. The county's choice not to adopt the new DNR definition of Type 3 waters found in WAC 242-16-030 was not an amendment to its CAO and was not clearly erroneous. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Under BAS established in this record a 25-foot buffer for Type 4 and 5 waters is "functionally ineffective." A buffer averaging provision allowing a fifty percent reduction to a 25-foot buffer for

minor new development does not comply with the Act and substantially interferes with Goal 10 of the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Under the record in this case, the County included a wide range of science and appropriately included BAS in its decision. *Mitchell v. Skagit County* 01-2-0004c (FDO 8-6-01)

Reduction of distance from a GHA location that required geological reports and assessments, was not in conformance with BAS and did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 7-13-01)

A county complies with the GMA in designating 5,200 acres of habitats of local importance and protecting those areas through HMPs which incorporate BAS. *WEAN v. Island County* 00-2-0054 (FDO 5-21-01)

The designations of priority species and species of local importance that include areas associated with or inhabited by threatened, endangered, and/or sensitive species as well as state candidate and monitor species, under the record in this case complies with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-14-01)

Increased protections adopted for Type 4 and 5 waters that feed into salmon bearing streams are found to comply under the record in this case. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

The adequacy of a riparian buffer proposal is ultimately measured not by the characteristics of the buffer, but by the affect of that buffer on the fish habitat. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

The WDFW PHS does not constitute the only BAS for stream buffer widths. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

'Available' means not only that the evidence must be contained in the record, but also that the science must be practically and economically feasible. 'Best' means that within the evidence contained in the record a local government must make choices based upon the scientific information presented to it. The wider the dispute of scientific evidence, the broader the range of discretion allowed to local governments. Ultimately, a local government must take into account the practical and economic application of the science to determine if it is the 'best available'. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

BAS was not satisfied where the record contained no scientific support of reduced buffers for activities defined as minor new development. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

Substantial interference with the goals of the Act is removed where buffer sizes are increased and HMPs are required prior to development in HCAs. *Diehl v. Mason County* 95-2-0073 (CO 12-1-00)

Under the BAS contained in this record a category B wetland buffer that was increased to 50 feet complied with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

Where the record contains the only BAS that was available on a particular question, petitioner failed to sustain his burden of proving noncompliance by merely claiming the science was outdated. *Carlson v. San Juan County* 00-2-0016 (FDO 9-15-00)

The GMA requires a local government to adopt DRs that protect designated CAs. In discharging its duty to protect CAs a local government must include BAS and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

In deciding whether BAS has been accomplished a GMHB will review the scientific evidence contained in the record, determine whether the analysis by the local decision-maker of the scientific evidence and other factors involved a reason process and whether the decision by the local government was within the parameters of the GMA under RCW 36.70A.172(1). *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

The provisions of BAS directing both preservation and enhancement of anadromous fish limits the discretion available to local governments and requires a more heavily weighted towards science decision. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

Under *HEAL v. GMHB*, 96 Wn. App. 522 (1999) a local government has the authority and obligation to take scientific evidence and balance it among the goals and requirements of the GMA. However, the case inaccurately refers to the burden on petitioners to prove a local government acted "arbitrarily or capriciously." The case also apparently holds that scientific evidence must play a major role in the context of critical areas. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

In determining what is "science" under BAS a process that consists of four stages of (1) making observations, (2) forming hypothesis, (3) making predictions and (4) testing those predictions are fundamental to the establishment of an appropriate "science." A major principle of scientific inquiry is replication. The principle of replication is most generally used in the scientific community as "peer review". *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

A 25-foot riparian buffer zone even if it is a managed, compact buffer zone for ongoing agricultural activities in a designated ALR was below the range of BAS as shown by the record. It did not fall within the range of peer tested BAS in the record. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

A CAO that exempts Type 4 and 5 non salmon-bearing waters and does not provide for any buffering of those types of streams is not within the range of BAS and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

A CAO that exempts any stream buffer with armoring from CA protection is not BAS and does not comply with the GMA. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

A local government that ignores BAS recommendations from agencies with expertise, applies BAS for healthy streams to degraded ones and precludes the timely submission of agency BAS recommendations does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

The "special consideration" language relating to anadromous fish under RCW 36.70A.172(1) requires a result more heavily weighted towards science than might otherwise be required under the BAS provisions of the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A local government may not ignore BAS in favor of the science it prefers simply because the latter supports the decision the local government wants to make. See *HEAL v. GMHB* 96 Wn. App. 522 (1999). *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A local government failed to include BAS in its efforts to protect shellfish areas by relying on a pre-GMA SMP that clearly had inadequate buffers and thus did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the failure to adopt compliant designations and DRs which were due 9-1-92, substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A provision that allows reduction of shoreline buffer areas through buffer averaging of existing residential setbacks, even with a requirement for a HMP, does not include BAS and does not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

A local government may not choose its own and/or outdated science and disregard BAS in order to support the choice it wants to make. See *HEAL v. GMHB* 96 Wn. App 522 (1999). *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

BAS includes both a procedural and a substantive element. *Willapa v. Pacific County* 99-2-0019 (FDO 10-28-99)

If the local government fails to comply with the GMA because it does not adopt appropriate and specific standards and/or criteria to protect CAs, the question of BAS is not reached. *Willapa v. Pacific County* 99-2-0019 (FDO 10-28-99)

Where certain aquifer recharge areas were not "critical" because they were not vulnerable to contamination, their lack of designation was within BAS as shown by the record. *ARD v. Shelton* 98-2-0005 (CO 6-17-99)

The discretion of a local government in designating and protecting CAs is limited by the requirements to: (1) ensure compliance with the GMA, (2) protect CAs, (3) ensure no net loss of CA functions, and (4) include BAS. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

The record contained no evidence that anadramous fish were given *any* consideration in the development of the FFA DRs. *Diehl v. Mason County* 95-2-0073 (CO 5-4-99)

Under the record in this case, inclusion of BAS meant that the FFA DRs must contemplate the likelihood of river avulsion. A moratorium prohibiting most development in the affected areas is only a temporary measure. Permanent regulatory measures are necessary to fulfill the GMA requirement to protect FFAs. *Diehl v. Mason County* 95-2-0073 (CO 5-4-99)

BAS requires that a local government also give special consideration to conservation and protection measures necessary to preserve or enhance anadramous fish. *Diehl v. Mason County* 95-2-0073 (CO 5-4-99)

A local government cannot rely on a plan not yet developed to claim compliance with the GMA requirement to give special protection to anadromous fish. *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

The broader the scientific evidentiary dispute, the greater discretion a local government has in choosing its course of action. *Storedahl v. Clark County* 96-2-0016 (CO 12-17-97)

Where a range of recommendations from sources with expertise was considered and wetland buffers were established at the minimum end of the scientifically accepted scale but were within the BAS range, GMA compliance was achieved. *Diehl v. Mason County* 95-2-0073 (CO 9-18-97)

A standard 50-foot buffer for type IV and V waters, while at the low end of the range of scientific recommendations, achieved compliance because the buffers were within the range of BAS shown in this record. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

Where BAS in the record showed that the County excluded designation and protection of important habitat areas without any detailed reasoned analysis, except a claim of insufficient time, the action did not comply with the GMA. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

The requirements of RCW 36.70A.172(1) require a local government to use BAS when designating and protecting CAs to protect their functions and values. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

A local government is required to substantively include BAS in the designation and protection of CAs. Consideration only is not sufficient to comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

A GMHB should determine whether compliance with the requirement of BAS has been achieved by looking at the scientific evidence contained in the record and then determining whether the analysis by the local decision-maker involved a reasoned process and whether the decision was within the parameters established by RCW 36.70A.172. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

Local conditions have an impact in determining what is the "best" science. The goals of the GMA, the practicality of the science and the fiscal impact must be balanced by a local government in determining how to designate and protect CAs. The scientific evidence must be contained within the record but also must be practical and economically feasible. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

Local governments are required under RCW 36.70A.172(1) to include conservation and protection measures "necessary to preserve or enhance anadromous fisheries." Local government discretion is restricted when dealing with anadromous fish. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

The provisions of RCW 36.70A.172 apply only to CAs and do not apply to purely stormwater issues. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

Definitionally RCW 36.70A.172(1) applies to designating and protecting CAs, but does not apply to a review of the CAO for consistency with the CP. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

Future amendments to a noncompliant CAO must address BAS under RCW 36.70A.172. *Diehl v. Mason County* 95-2-0073 (CO 9-6-96)

The requirements of RCW 36.70A.172 do not apply to the issue of compliance of a CAO adopted before the BAS requirement became effective. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

BEST MANAGEMENT PRACTICES (BMPS)

A county complies with the GMA in designating 5,200 acres of habitats of local importance and protecting those areas through HMPs which incorporate BAS. *WEAN v. Island County* 00-2-0054 (FDO 5-21-01)

FWHCAs buffers are below the ranges required by BAS under the record in this case. *Diehl v. Mason County* 95-2-0073 (CO 3-14-01)

Substantial interference with the goals of the Act is removed where buffer sizes are increased and HMPs are required prior to development in HCAs. *Diehl v. Mason County* 95-2-0073 (CO 12-1-00)

In order for BMPs to be the basis for exemptions from a CA ordinance there must be effective monitoring and enforcement provisions to ensure that BMPs are implemented and followed. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

If BMPs are relied upon for protection of CAs, some type of monitoring and enforcement must be included to ensure that the BMP plans are actually implemented and followed. BMPs may be voluntary and individually developed but benchmarks, timeframes and monitoring must be established to ensure actual protection. There must also be a non-voluntary fallback approach. BAS applies directly to such BMPs. *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

BOARD RULES

The filing of a motion is deemed complete upon actual receipt at the Board's office. WAC 242-02-330(1). A responding party must ascertain the actual date of filing and either respond within ten days or request an extension to respond. *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)

A motion for reconsideration may not be filed after an order granting extension of time. That order does not qualify as a final decision under WAC 242-02-832(1). *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)

An argument raised for the first time at the HOM under the record in this case will not be considered. *FOSC v. Skagit County* 00-2-0048c (FDO 2-6-01)

A County may not raise an issue at the issue at the HOM that it did not present in its responsive brief. WAC 242-02-570(1). *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

The reconsideration rules provision of WAC 242-02-832 does not authorize the filing of a reply brief to a response to the motion for reconsideration. Each side gets one opportunity to set forth arguments on reconsideration. The reply brief will be stricken. *Servais v. Bellingham* 00-2-0020 (RO 11-20-00)

A cross-motion filed after the date fixed in the PHO for filing motions will be stricken from the record and not considered. *Servais v. Bellingham* 00-2-0020 (MO 8-9-00)

The provisions of WAC 242-02-522(8) authorizing joinder of additional parties has never been used. A GMHB will balance the fair treatment of those who have expressed an interest in the matter with ensuring the prompt and orderly disposition of a case and assuring that the rules do not overburden parties with limited resources. A GMHB will avoid any chilling effect on citizen involvement. Under the record here, the motion is denied. An informational packet for potential intervenors was sent to the parties for whom the county requested joinder. *FOSC v. Skagit County* 99-2-0016 (MO 6-10-99)

WAC 242-02-558(10) authorizes a GMHB to enter orders that address any matters that may expedite a hearing. Under the circumstances in this case, a prehearing order requiring a notice of appearance by an attorney to be filed not later than seven days in advance of the hearing on the merits is essential for the proceedings to advance in an orderly and fair manner. *CMV v. Mount Vernon* 98-2-0012 (MO 9-22-98)

Where an attorney appeared seven days before the hearing on the merits on behalf of a pro se petitioner and the arguments made at the hearing were significantly more specific than the opening brief, the respondents will be allowed an opportunity to supply post-hearing briefs. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

The GMA establishes a jurisdictional statute of limitations of 60 days after publication as the cutoff for filing petitions. It is within the purview of the joint Boards to adopt a rule defining actual receipt of a petition for the establishment of the date of filing. *Weber v. Friday Harbor* 98-2-0003 (MO 4-16-98)

RCW 36.70A.270(7) authorizing the adoption of "rules of practice and procedure" does not authorize a GMHB to impose a jurisdictional requirement for service of a PFR when no such specific authority is provided in the GMA. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)

WAC 242-02 does not contain a requirement for a party submitting a motion to be given an opportunity to rebut the response. *FOSC v. Skagit County* 95-2-0065 (MO 8-13-97)

Amendments to RCW 36.70A.270(7) found in ESB 6637 adopted in 1996 show a legislative intent that the Administrative Procedures Act (RCW 34.05) is to be the primary focus of a GMHB for procedural issues, rather than WAC 242-02. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)

The GMA does not have a requirement of service other than filing with a Board office. WAC 242-02-230 provides that substantial compliance is sufficient. In order to justify a dismissal for failure to serve, a local government must demonstrate that it has suffered prejudice. *Beckstrom v. San Juan County* 95-2-0081 (MO 10-30-95)

The requirement to list the addresses of the petitioners in the PFR is not jurisdictional and failure to do so did not warrant dismissal. *Beckstrom v. San Juan County* 95-2-0081 (MO 10-30-95)

WAC 242-02-110 allows a non-attorney who is a member of the group to represent such a group but does not authorize a non-attorney to represent a person. *FOSC v. Skagit County* 95-2-0065 (MO 5-26-95)

BOARDS

Presentation by planning staff and planning consultants for the county was clear, informative and responsive and was within our original expectation that planning personnel, rather than attorneys, would represent local governments in GMHB hearings. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Accommodation of regional differences is a factor built into the GMA and is often reflected in differences among the holdings of the three boards. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

BUFFERS

Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The use of a 35-foot buffer in Type 1 waters under SMP designations "suburban" and "urban" areas continue to substantially interfere with the goals of the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Buffer width requirements for Type 1 waters involving minor new development establishing a 150 foot width in "natural" areas, a 75 foot width in "conservancy" areas and a 50 foot width in "rural" areas removes substantial interference. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area to 20,000 square feet removed substantial interference as to minor new development in Type 2, 3, and 4 waters. However, the county's failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Under the record and BAS in this case the county complied with the Act by removing an inconsistency in definitional criteria for Type 1-5 waters. The county's choice not to adopt the new DNR definition of Type 3 waters found in WAC 242-16-030 was not an amendment to its CAO and was not clearly erroneous. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Under BAS established in this record a 25-foot buffer for Type 4 and 5 waters is "functionally ineffective." A buffer averaging provision allowing a fifty percent reduction to a 25-foot buffer for minor new development does not comply with the Act and substantially interferes with Goal 10 of the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The use of a program involving innovative techniques to establish proper CA buffering within agricultural zones appropriately balances Goals 6, 8, 9, and 10. *Mitchell v. Skagit County* 01-2-0004c (FDO 8-6-01)

FWHCAs buffers are below the ranges required by BAS under the record in this case. *Diehl v. Mason County* 95-2-0073 (CO 3-14-01)

Increased protections adopted for Type 4 and 5 waters that feed into salmon bearing streams are found to comply under the record in this case. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

Under a managed riparian buffer provision in agricultural RL the concept is compliant but the necessary performance standards recommended by the scientific advisory panel and adopted by the county continues to be noncompliant until completion of that action is made. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

The adequacy of a riparian buffer proposal is ultimately measured not by the characteristics of the buffer, but by the affect of that buffer on the fish habitat. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

The WDFW PHS does not constitute the only BAS for stream buffer widths. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

BAS was not satisfied where the record contained no scientific support of reduced buffers for activities defined as minor new development. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

Reducing buffers for minor new development defined in the CAO to widths smaller than those adopted for major activities substantially interfered with Goals 10 and 14 of the Act. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

Under the BAS contained in this record a category B wetland buffer that was increased to 50 feet complied with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

In order to remove a previously imposed finding of invalidity the County must make a 50-foot buffer requirement applicable to all Type 5 streams. The County in this case has not sustained its burden of showing its action removed substantial interference with the goals of the Act. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

Where a shoreline buffer reduction provision requires a geotechnical study to insure the setback would preclude the need for hard-armoring for the lifetime of the residence and which provides for native vegetation retention, the ordinance complies with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 10-12-00)

A CAO that exempts Type 4 and 5 non salmon-bearing waters and does not provide for any buffering of those types of streams is not within the range of BAS and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

A CAO that exempts any stream buffer with armoring from CA protection is not BAS and does not comply with the GMA. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

An administrative discretion to reduce buffers by 25% and preclude gathering of information to justify greater buffer widths does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A local government failed to include BAS in its efforts to protect shellfish areas by relying on a pre-GMA SMP that clearly had inadequate buffers and thus did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the failure to adopt compliant designations and DRs which were due 9-1-92, substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

Use of a 50-foot buffer in rural lands and a 100-foot buffer in UGAs and rural lands of more intense development to segregate agricultural RLs from incompatible uses complies with the GMA. There is no specific GMA requirement for the minimum width of such buffers. *Diehl v. Mason County* 95-2-0073 (CO 8-19-99)

Exempting "functionally isolated" buffers (divided by roads, etc.) from protection does not comply with the GMA under this record. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

Buffer widths from 5 to 20 feet for lands adjacent to agricultural lands did not assure that such adjacent lands would not interfere with continued use of the RL and therefore did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 12-18-98)

While elimination of nonconforming lots adjacent to RLs may be impossible because of prior vesting, under the record here the county must take some action to buffer and keep conversion pressure away from the RLs. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

Where a range of recommendations from sources with expertise were considered and wetland buffers were established at the minimum end of the scientifically accepted scale but were within the BAS range, GMA compliance was achieved. *Diehl v. Mason County* 95-2-0073 (CO 9-18-97)

A standard 50-foot buffer for type IV and V waters, while at the low end of the range of scientific recommendations, achieved compliance because the buffers were within the range of BAS shown in this record. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

A separate CA permit is not required by the GMA, but in order to comply with the GMA the ordinance must be clear that no adverse alteration to CAs or their buffers' functions and values can occur and that, if damaged, buffers must be allowed to rehabilitate to their pre-damaged purpose and function. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

The reduction of riparian habitat buffering recommendations without a scientific basis, nor with a reasoned analysis did not comply with the BAS requirement of the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

The elimination of buffer protection for class IV and V waters and a limited buffer for class II and III waters under the record in this case did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

The requirement of RCW 36.70A.060 that local governments shall assure the use of lands adjacent to RLs shall not interfere with their continued use as RLs, provides the basis to require adequate buffering between RLs and incompatible uses. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A local government decision that distinguishes the size of a wetland buffer in an urban area from the size of a wetland buffer in a rural area complies with the GMA. *CCNRC v. Clark County* #92-2-0001 (FDO 11-10-92)

BURDEN OF PROOF

1. Compliance

The legislative action taken by a local government is presumed valid upon adoption. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. *CCARE v. Anacortes* 01-2-0019 (FDO 12-12-01)

Ordinance amendments made in response to a finding of noncompliance are presumed valid. RCW 36.70A.320. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. RCW 36.70A.320. *ICCGMC v. Island County* 98-2-0023c (CO 11-26-01)

The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Where petitioners fail to sustain their burden of proof of showing that the redesignation of petitioners' property did not comply with the Act, the county is found to be in compliance. *Gudgell v. San Juan County* 00-2-0053 (FDO 4-10-01)

An action is clearly erroneous if a GMHB is left with a firm and definite conviction that a mistake has been made. *Achen v. Clark County*, 95-2-0067 (CO 11-16-00)

A GMHB must find compliance unless the petitioner sustains its burden of proof of showing the action is clearly erroneous in view of the entire record and the goals and requirements of the GMA. *Achen v. Clark County*, 95-2-0067 (CO 11-16-00)

Where the record contains the only BAS that is available on a particular issue, petitioner fails to sustain its burden of proving noncompliance. *Carlson v. San Juan County*00-2-0016 (FDO 9-15-00)

Ordinance amendments made in response to a finding of noncompliance are presumed valid. Petitioners bear the burden of proving under the clearly erroneous standard noncompliance with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

Where the record showed compliance with RCW 36.70A.070(5) in designating rural centers because the county started at the correct beginning point, adopted appropriate criteria, and applied those criteria on a consistent basis and minimized and contained existing areas of more intense development, petitioner had not sustained its burden of showing the county's action was clearly erroneous. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

Where the record demonstrated that the local government had used inappropriate criteria in failing to designate RLs and that the criteria that were used were used incorrectly, the petitioner sustained its

burden of proving that the county action failed to comply with the GMA under the clearly erroneous standard. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

It is not the role of a GMHB to "balance the equities" in deciding a case. The GMHB role is to determine compliance. If noncompliance is found, a GMHB remands the issue and is not authorized to make a final decision on the merits of the case. Local governments are afforded a "broad range of discretion" in determining a methodology for compliance. A petitioner must sustain the burden of showing that the action of the local government did not comply with GMA under the clearly erroneous standard of review. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

Under the clearly erroneous standard the relevant consideration is "has petitioner demonstrated by competent evidence that the county is clearly erroneous in its adoption of the current ordinance as it relates to the issues properly under consideration in this compliance hearing." *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

RCW 36.70A.320(2) establishes that the burden is on petitioners to prove noncompliance under the clearly erroneous standard. *TRG v. Oak Harbor* 96-2-0002 (CO 3-5-98)

The burden of showing noncompliance rests with the petitioner. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

The failure to brief or supply oral argument supporting the legal and factual basis of a claim leads to the inescapable conclusion that petitioners have failed to meet their burden of proof. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

Once or if a local government meets its burden of showing it no longer substantially interferes with the fulfillment of the goals of the GMA, the petitioner then bears the burden under the clearly erroneous standard of proving the action does not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

When a local government action was taken prior to July 27, 1997, the effective date of ESB 6094, but the GMHB hearing and decision was subsequent to that date, the procedural provisions of the new amendments apply to the decision in the case. Such provisions include substitution of the clearly erroneous standard for the previous preponderance burden. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

Where the hearing and decision for compliance postdate the effective date of ESB 6094, the petitioner has the burden of proof under the clearly erroneous standard. *Storedahl v. Clark County* 96-2-0016 (CO 12-17-97)

The procedural aspects of ESB 6094, including the new burden of proof, apply to an action taken prior to the effective date of ESB 6094 where the GMHB hearing and decision postdates the effective date. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)

Regardless of whether a GMHB decision issued after July 27, 1997, involves either a new petition or compliance hearing, the new clearly erroneous standard of review applies. *CCNRC v. Clark County* 96-2-0017 (CO 11-2-97)

Under the clearly erroneous standard a GMHB, after reviewing the entire record submitted by the parties in light of the policies, goals and requirements of the GMA, will find a state agency or local government in compliance unless and until the person challenging the action persuades the GMHB that, with a

definite and firm conviction, a mistake has been made. *CCNRC v. Clark County* 96-2-0017 (CO 11-2-97)

The clearly erroneous standard applies in all situations except those dealing with invalidity or the shoreline element. *CCNRC v. Clark County* 96-2-0017 (CO 11-2-97)

Where a county adopts its CP and implementing DRs prior to July 27, 1997, and the last petition challenging those actions was filed August 4, 1997, the procedural requirements of ESB 6094 apply to a GMHB hearing and decision. *Abenroth v. Skagit County* 97-2-0060 (MO 10-8-97)

The substantive provisions of ESB 6094, effective July 27, 1997, clarified ambiguities and can provide useful and instructive demonstrations of legislative intent, even when a local government took action prior to July 27, 1997. Under the specific language of Section 53, a GMHB may not find noncompliance based upon the legislative changes. *Abenroth v. Skagit County* 97-2-0060 (MO 10-8-97)

The petitioner has the burden of demonstrating by a preponderance of the evidence in the record that the methods chosen by the local government to designate and protect CAs and their buffers do not comply with the goals and requirements of the GMA. It is not the role of a GMHB to determine if the ordinance might have been done differently or better. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

Local government CPs and DRs are presumed valid upon adoption. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

A CP is presumed valid and remains so until and unless the petitioner proves by a preponderance of the evidence that the CP did not comply with the GMA. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

A respondent jurisdiction previously found to be noncompliant with the GMA has the burden of showing compliance. *WEC v. Whatcom County* 95-2-0071 (CO 9-12-96)

The GMA requirement for an IUGA land capacity analysis does not shift the burden of proof to a local government but simply provides an analytic framework to determine whether to expand IUGAs beyond municipal boundaries. The burden of showing the framework was not used or that it was used in a way that did not comply with the GMA is on a petitioner. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Once a preponderance of evidence overcomes the presumption of validity, the burden of coming forward shifts to the respondent. Such evidence must be shown in the record. *Diehl v. Mason County* 95-2-0073 (RO 2-22-96)

Once a determination of noncompliance has been made, the presumption of validity has been overcome and the local government thereafter has the burden of showing compliance has been achieved. *WEC v. Whatcom County* 94-2-0009 (CO 2-28-95)

The record is the source of evidence upon which a GHMB bases its decision about compliance or noncompliance. Regardless of who has the burden of proof and no matter how presumptively valid an action is, if the record does not contain evidence to refute valid challenges, the preponderance test will be met. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

The parties to this compliance hearing agreed that the burden of proof rested upon the county. The GMA is unclear as to the burden of proof in a compliance hearing because of the presumption of validity versus the logic of having a local government come forward with evidence of compliance once noncompliance has been established. *Port Townsend v. Jefferson County* 94-2-0006 (CO 12-14-94)

Once a preponderance of evidence overcomes the presumption of validity, the burden of coming forward shifts to the respondent. Such evidence must be shown in the record. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

The burden of showing noncompliance rests with the petitioner. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

The burden of proof established by the GMA is a preponderance of evidence test. Such a burden presents a dichotomy with the requirement that a DR is presumed valid upon adoption. As such, the review of a local government decision involves specific analysis of both the process and the ultimate product adopted. Such an analysis does not allow a GMHB to choose the best or preferred option but does mandate that the local decision comply with both the goals and requirements of the GMA. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

2. Invalidity

BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area to 20,000 square feet removed substantial interference as to minor new development in Type 2, 3, and 4 waters. However, the county's failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

A local government has the burden of proof to demonstrate that an ordinance it enacted in response to a determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the Act. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

Where a subsequent LAMIRD ordinance reduced the areas that were established in the CP, the burden of showing substantial interference rests with the petitioners. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A county has the burden of showing that the ordinance that was enacted "in response" to a determination of invalidity will no longer substantially interfere with the goals of the Act under RCW 36.70A.320(4). Where ordinances have been adopted prior to a finding of invalidity, a county accepted its burden for a request to rescind or modify those determinations of invalidity. Where no motion to rescind or modify was filed, the 45-day time limitation of RCW 36.70A.330(2) did not apply. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A local government has a burden of proof, under RCW 36.70A.320(4), that its action removes substantial interference with the goals of the Act in order to rescind or modify invalidity. *Panesko v. Lewis County* 00-2-0031c (MO 2-26-01)

Pursuant to RCW 36.70A.320(4) a local government subject to a determination of invalidity has the burden of demonstrating that the ordinance that it enacted in response to the initial determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the Act under the standard expressed in RCW 36.70A.302(1). *Diehl v. Mason County* 95-2-0073 (CO 12-1-00)

Mason County failed to meet its burden of showing removal of substantial interference in its FFA ordinance. *Diehl v. Mason County* 95-2-0073 (CO 7-24-00)

Where invalidity has previously been found, a local government has the burden to show that it no longer substantially interferes with the goals of the GMA. *ICCGMC v. Island County* 98-2-0023 (CO 11-23-99)

Where a record fails to show why a previously invalidated area of land remained in the RAID, the local government's burden of proof is not met. *ICCGMC v. Island County* 98-2-0023 (CO 11-23-99)

Where the petitioners overcame the presumption of validity and proved that changes to an ordinance in response to a finding of invalidity did not comply with the GMA, and the county failed to meet its burden of demonstrating that substantial interference with the goals of the GMA had been removed, recision was denied. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

For those elements of the CP and DRs previously subject to a determination of invalidity the local government has the burden of demonstrating that the ordinance or resolution enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the GMA. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

The burden of showing substantial interference with the goals of the GMA is a higher one than the clearly erroneous standard. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

On a motion to rescind invalidity a local government has the burden of showing that the legislative action adopted in response to a determination of invalidity no longer substantially interferes with the goals of the GMA. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)

Where a portion of the CP and/or DRs relate to a prior determination of invalidity, a local government had the burden of demonstrating the amended provisions no longer substantially interfered with the fulfillment of the goals of the GMA. If the county meets this burden the amendments are then presumed valid and the burden shifts to the petitioner to show that the county's action is not in compliance with the GMA. RCW 36.70A.320. *Wells v. Whatcom County* 97-2-0030 (FDO 1-16-98)

Under recent amendments to RCW 36.70A.320(4), in a recision of invalidity hearing the local government has the burden of showing that it no longer substantially interferes with the fulfillment of the goals of the GMA. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

A local government subject to a determination of invalidity has the burden of demonstrating that an ordinance adopted in response to the invalidity no longer substantially interferes with the goals of the GMA under the 1997 amendments found in ESB 6094, effective July 27, 1997. *WEC v. Whatcom*

County 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

A GMHB will apply the presumption of validity found in RCW 36.70A.320(1) regardless of which party has the burden of proof. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

Petitioner has the burden of proof of demonstrating substantial interference with the goals of the GMA. *Seaview v. Pacific County* 95-2-0076 (CO 7-31-96)

At the hearing on the merits or at a compliance hearing the party asserting substantial interference with the goals of the GMA has the burden of proof. *WEC v. Whatcom County* 94-2-0009 (CO 2-28-95)

3. SEPA

Petitioners have the burden of showing a lack of SEPA compliance for GMA purposes based on the clearly erroneous standard. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A county's SEPA determination is entitled to deference and accorded substantial weight. In this case petitioners have sustained their burden under the clearly erroneous standard of proving that the county failed to comply with the Act regarding SEPA. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Where a County significantly amended its 1992 CAO, adopted several existing environmental documents under WAC 197-11-630 and issued a DNS, petitioners did not sustain their burden of showing the DNS was clearly erroneous. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

The clearly erroneous standard applies to a determination of non-significance. *Achen v. Clark County*, 95-2-0067 (CO 11-16-00)

A review of a DNS by a GMHB is conducted under the clearly erroneous standard. The burden of proof is on petitioners. *Willapa v. Pacific County* 99-2-0019 (FDO 10-28-99)

The burden of showing that an EIS is inadequate rests with the petitioner. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

4. SMA

A GMHB must uphold the decision of DOE concerning an amendment to the local SMP relating to shorelines of statewide significance unless the GMHB is persuaded by clear and convincing evidence that the DOE decision is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines set forth in WAC 173-16. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

In an appeal of a proposed amendment to the local SMP for shorelines of the state, the scope of review addresses the question of whether there is compliance with the requirements of the SMA, the requirements of the GMA, the policy of RCW 90.58.020 and applicable guidelines and SEPA. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

Under RCW 90.58.190(2)(d) the appellant has the burden of proof in a GMHB hearing. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

RCW 90.58.190(2)(b) does not specify whether a GMHB is to review the decision of DOE or the initial decision of the local government. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

RCW 90.58.190 requires a GMHB to uphold the decision of DOE unless an appellant sustains the burden of proving that DOE's decision did not comply with the requirements of the SMA, including the policies of RCW 90.58.020 and applicable guidelines, the goals and requirements of the GMA, and the SEPA requirements for adoption of amendments under RCW 90.58. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

CAPITAL FACILITIES ELEMENT

The fact that water and sewer facilities are provided by non-county serving agencies does not relieve the county of including the budgets and/or plans in its analysis of the proper location of an UGA. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such needs for infrastructure does not comply with the GMA, nor did the county properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A CFP must use the same population projections used in other parts of a CP. Internal consistency requires all elements of a CP to be based upon the same planning period and the same population projections. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Where the City did not make a threshold determination prior to adopting a particular fire protection amendment to the CFP of the CP, SEPA has not been complied with and thus the City has failed to comply with the GMA. *Achen v. Battleground* 99-2-0040 (FDO 5-16-00)

A CFE financing strategy cannot be speculative. Reliance on voter approval, under the record in this case, does not fall within that prohibition. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

A CFE which includes changing LOS standards, increasing use of other sources of revenue and decreasing demand for and use of capital facilities if voter approval is unsuccessful, complies with the GMA. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

A CFE which only forecasts future needs and proposed locations and capacities of new capital facilities on a 6-year projection does not comply with the GMA requirement that such a forecast be done on a 20-year cycle. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

Under the GMA, private funding is a reasonable alternative source of funding. *CCNRC v. Clark County* 98-2-0001 (FDO 7-27-98)

The general bonding capacity of a local government is available to determine whether adequate sources of funds are set forth in the CFE. *TRG v. Oak Harbor* 96-2-0002 (CO 3-5-98)

A local government may change its LOS standard to avoid a huge financial impact to its water system when the action is supported by the record and is based upon a reasoned decision-making process. WAC 365-195-510(3)(b). *TRG v. Oak Harbor* 96-2-0002 (CO 3-5-98)

A county has the responsibility to pull together all of the CFE information from other districts or agencies in its jurisdiction so that it can determine and make consistent the location, needs and costs of all capital facilities. It is the county's responsibility to make a regional analysis of all CFE needs, locations and costs so the public has an accurate assessment of what and where tax dollars are being spent, regardless of whether they go to the state, county or special districts. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

If the required analysis of a CFE shows a significant funding shortfall it is a county's duty to reassess land use and related elements of the CP so that the plan is internally and externally consistent. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

An excellent discussion of the LOS standards adopted by the city, potential revenue sources, identification of costs, and a prioritization process for action if probable funding sources become insufficient, complies with the GMA. *Eldridge v. Port Townsend* 96-2-0029 (FDO 2-5-97)

Establishment of specific UGAs with finite boundaries and a quantifiable allocation of population must first be made before any credible capital facilities analysis can occur. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

Where existing schools have sufficient capacity to accommodate a six-year projected increase in enrollment, no funding source for capital facility improvements need be listed. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

RCW 36.70A.070(3)(d) requires that a CFE clearly identify funding sources. A generalized list of funding sources did not comply with such a requirement. However, use of other sections of the CP which are incorporated by reference and are sufficiently specific documents does comply with the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

The purpose of the capital facilities element of a CP is to see what is available, determine what is going to be needed, figure out what that will cost, and determine how the expense will be paid. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Local decision-makers are required by the GMA to review potential revenue avenues, determine if projected funding will meet the needs set forth in the CFE, and prioritize those projects to serve areas where growth is to be channeled. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

CLUSTERING

A clustering ordinance which prohibits urban service standards, involves very limited numbers in sizing of clusters, requires affordable housing and applies only to limited areas outside of UGAs complies with the Act. RCW 36.70A.070(5)(b) authorizes a county to permit rural development through clustering to accommodate appropriate rural densities. The provisions of .070(5)(c) for containment, visual compatibility and reduction of low-density sprawl applies to such clusters. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl. Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A framework analysis of the requirements of RCW 36.070A.070(5) is set forth in this case. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

An urban reserve designation of a remainder area from a cluster development that is implemented throughout the county and at the owner's discretion does not comply with the Act. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A rural element must provide for a variety of rural density uses, EPFs and rural government services. Storm or sanitary sewers except as allowed for health reasons under RCW 36.70A.110(4) are not authorized. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The allowance of unlimited clustering does not comply with the Act when its purpose is to assure greater densities in rural and resource areas and not to conserve RLs and open space. When allowable clustering results in urban, and not rural, growth it substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

AMIRDs must be identified in the CP and must provide logical outer boundaries delineated by the built environment as it existed on July 1, 1990. Nothing in the GMA allows clustering to be used to the degree that would create new AMIRDs. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

The GMA requires that a county preclude sets of clusters of such magnitude that they will demand urban services. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

The use of bonus densities along with a failure to limit the number of clustering lots allows non-rural densities in rural areas at a magnitude that demands urban services. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

The Legislature has recently clarified the allowance of cluster development in agricultural lands. As long as the long-term viability of agriculture lands is not threatened by conflicting uses, clustering is an allowable option. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

RCW 36.70A.177 is a new section of the GMA and directs that in agricultural lands of long-term commercial significance innovative zoning techniques, including cluster zoning, are appropriate. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

Compact new development in agricultural zones that allows appropriate conservation of agricultural lands is now specifically authorized by the GMA. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

A failure to provide minimum lot sizes and maximum number of lots per site in clustering provisions of a DR which continued to allow urban growth outside of properly established UGAs did not comply with the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) & *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

An agricultural cluster provision which permits urban growth in designated RL areas, does not severely limit the total number of dwelling units and densities and allows a significant percentage of the agricultural land to be converted into residential use did not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

An ordinance that simply refers to a PUD process to cluster density away from a CA, complies with the GMA. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

Planned residential developments or other clustering schemes, properly designed and limited in scope may protect sensitive areas, riparian trails and green space in rural areas. If properly used they can constitute a tool for preservation of sensitive lands and open space. The GMA encourages such use. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

A local government's decision to not include any clustering in RLs, given the history of the past 15 years of clustering having the effect of reducing RLs, did not violate RCW 36.70A.020(6). *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The absence of a cap on PUD clusters in addition to a relaxation of aggregation standards to allow 8,400 square foot minimum lot sizes outside of an IUGA did not comply with the GMA. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

The allowance of a transfer of development rights from commercial forest to rural forest, with no density limit or cap for a cluster development, did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

A clustering scheme which allowed 40% of the designated forestland area for conflicting uses did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

COMMUNITY, TRADE & ECONOMIC DEVELOPMENT (CTED), DEPARTMENT OF

A county must submit amendments to its development regulations to CTED at least 60 days prior to adoption. RCW 36.70A.106. Failure to do so puts the county in noncompliance with the GMA. Even though the County submitted the development regulations later, the County must submit the ordinance to CTED anew. The submission must be accompanied by a notice indicating that 60 days are available for review and that comments by "state agencies, including the department" will be considered as if final adoption had not yet occurred. *Cameron-Woodard Homeowners Association v. Island County*, 02-2-0004 (Order on Dispositive Motion, 6-10-02)

The requirement of RCW 36.70A.106(3) that a CP or DR be submitted to CTED 60 days prior to final adoption does not apply to strictly procedural amendments. *Pellett v. Skagit County* 96-2-0036 (FDO 6-2-97)

An ordinance which by its terms was adopted under the authority of the GMA, even though it was not submitted to CTED prior to adoption pursuant to RCW 36.70A.106(1)(a), invoked GMHB jurisdiction in spite of a subsequently adopted resolution that the ordinance was adopted under the authority of RCW 36.70 and not the GMA. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)

Submission of the 10-year traffic forecast required by RCW 36.70A.070(6)(b)(iv) to CTED, but which was not included in the CP, did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

COMPLIANCE

1. In General

Under the GMA, the Board's authority to enter compliance orders is only triggered after the time period for compliance with a board's final decision and order entered under RCW 36.70A.300(3)(b) has lapsed, or at an earlier time at the request of the county to lift invalidity. RCW 36.70A.330(1). *Swinomish Indian Tribal Community v. Skagit County*, 02-2-0009c (Order Denying Request for Two-Track Compliance Schedule 11-15-02, p. 7)

We find no authority in the Act to order the county to adopt any particular regulations to be in effect during the remand period. *Swinomish Indian Tribal Community v. Skagit County*, 02-2-0009c (Order Denying Request for Two-Track Compliance Schedule 11-15-02, p. 7)

A county has wide discretion in determining which plant species and/or habitats have sufficient local importance to warrant designation and protection as species of local importance. *ICCGMC v. Island County* 98-2-0023c (CO 11-26-01)

The due date for compliance begins at the time of the original order or upon issuance of an order on reconsideration, whichever occurs last. *Diehl v. Mason County* 95-2-0073 (MO 6-5-01)

Where petitioners fail to sustain their burden of proof of showing that the redesignation of petitioners' property did not comply with the Act, the county is found to be in compliance. *Gudgell v. San Juan County* 00-2-0053 (FDO 4-10-01)

Where a county has requested review of ordinances within the context of a previous FDO remand, even though the appeal period has passed on the specific ordinances, review is taken with regard to whether or not a finding of compliance is warranted. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Under the 30 day time constraint found in RCW 36.70A.302(6) the issues of recision and/or modification of invalidity were bifurcated from the issues of noncompliance not involving invalidity, which would be addressed in a subsequent order. *Dawes v. Mason County* 96-2-0023 (CO 12-15-00)

The provisions of RCW 36.70A.130(2)(b) that allows a local government to suspend its public participation process "to resolve an appeal" of a GMHB hearing does not apply to changes in RL designations that were not part of the original FDO. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)

A compliance hearing addresses the issue of whether compliance with the Act has been achieved not necessarily whether a strict adherence to the remand order has been followed. *Achen v. Clark County*, 95-2-0067 (CO 11-16-00)

In deciding whether BAS has been accomplished a GMHB will review the scientific evidence contained in the record, determine whether the analysis by the local decision-maker of the scientific evidence and other factors involved a reason process and whether the decision by the local government was within the parameters of the GMA under RCW 36.70A.172(1). *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

Where a PFR restated issues already decided in a compliance hearing, a GMHB will review petitioner's brief and any supplemental exhibits properly submitted and issue an FDO without the need of a responding brief from the local government or a full HOM. *WEAN v. Island County* 00-2-0001 (FDO 6-26-00)

Standing to participate in a compliance hearing is governed by RCW 36.70A.330(2). Both the petitioner and a person with standing to challenge the legislation enacted in response to the FDO, have standing. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)

A party who is a petitioner in a consolidated case does not qualify as a petitioner for purposes of standing for the compliance hearing where the compliance hearing issue was not part of the party's original PFR nor brief or argued by that party during the HOM process. *ICCGMC v. Island County 98-2-0023* (MO 2-18-00)

It is not the role of a GMHB to decide the best choice available, but only to decide compliance with the GMA. *ICCGMC v. Island County* 98-2-0023 (RO 7-8-99)

Compliance with the language of a local government's own ordinance is required before compliance with the GMA can be achieved. The availability of public water services only, without public sewer and other urban services, does not provide the basis for logically-phased and efficiently-served urban development. *ICCGMC v. Island County* 98-2-0023 (RO 7-8-99)

Compliance with the GMA, not necessarily with specific aspects of the remand order, is that which is required. Under RCW 36.70A.3201 a great deal of discretion in the methodology of achieving compliance is allowed. *ARD v. Shelton* 98-2-0005 (CO 6-17-99)

The task of a GMHB is to determine compliance with the GMA, not whether there could be better solutions by a local government. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

Ensuring compliance with the GMA is the function of a GMHB. Failure of the local government to adopt a "state of the art" public participation program is a function of the ballot box. *CMV v. Mount Vernon* 98-2-0006 (CO 5-28-99)

After Superior Court remand orders of April 4 and June 11, 1997, a GMHB remand hearing was held and a remand order entered August 11, 1997. The order provided that the matters set forth in the Superior Court appeal were remanded to the county to achieve compliance with earlier GMHB orders as modified by the Superior Court. Particularly in light of the 1997 amendments to RCW 36.70A.330, jurisdiction did exist under these circumstances for a GMHB to review the county's action in spite of an absence of a PFR challenge filed within 60 days of the notice of publication of such action. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

It is not the role of a GMHB to "balance the equities" in deciding a case. The GMHB role is to determine compliance. If noncompliance is found, a GMHB remands the issue and is not authorized to direct a specific decision on the merits of the case. Local governments are afforded a "broad range of discretion" in determining a methodology for compliance. A petitioner must sustain the burden of showing that the action of the local government did not comply with GMA under the clearly erroneous standard of review. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

The responsibility of a GMHB is to decide whether a local government complied with the GMA, not whether a local government could have found a better solution than the one it adopted. *Diehl v. Mason County* 95-2-0073 (CO 9-18-97)

The authority of a GMHB is limited to reviewing the action of the local government to determine whether or not compliance with GMA has been achieved. There is no authority to direct a local government to adopt a specific ordinance or take a specific action. *Ellis v. San Juan County* 97-2-0006 (FDO 6-19-97)

It is not the role of a GMHB to determine whether a CP could be improved. The role of the GMHB is to determine if the minimum requirements of the GMA have been met in the adoption of the CP. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

A GMHB does not have authority to direct the preparation of an EIS. An incorrectly adopted DNS will be remanded with a finding of noncompliance. It is up to the local government to determine the appropriate level of SEPA analysis and appropriate action after the remand. *Seaview v. Pacific County* 96-2-0010 (FDO 10-22-96)

Compliance must be achieved with both the goals and specific requirements of the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

Compliance involves both the process and the substance of the goals and requirements of the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

Where a noncompliance finding was based upon a failure to adopt a CP, challenges to the adopted plan must be made by a PFR method. *Diehl v. Mason County* 95-2-0073 (CO 6-5-96)

Where the record showed obvious noncompliance and invalidity in portions of the record supplied by the local government, a GMHB will not ignore such action during a compliance hearing. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

The review by a GMHB is not to determine whether a better planning strategy exists, but rather to determine whether the goals and requirements of the GMA have been achieved. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Strict adherence to the recommendations set forth in a FDO is not the test of compliance. *WEC v. Whatcom County* 94-2-0009 (CO 2-28-95)

Once a determination of noncompliance has been made, the presumption of validity has been overcome and the local government thereafter has the burden of showing compliance has been achieved. *WEC v. Whatcom County* 94-2-0009 (CO 2-28-95)

The role of a GMHB is to decide whether an action is or is not in compliance with the GMA. A GMHB does not have authority to order a local government to take any particular action. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

A DR is presumed valid and compliance will be found unless petitioner sustains its burden of proof. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

2. Finding

Where a 192 acre property meets some, but not all, of the CP criteria for designation of 1:20 and/or 1:10, a County is within its range of discretion to designate the entire property as 1:10 rural residential under the record in this case. *OEC v. Jefferson County* 00-2-0019 (CO 8-22-01)

A CP amendment which replaces low-density residential housing with mixed use commercial on an 85-acre tract of land encourages urban type development in an area characterized by "very low-density residential development." The city's decision to infill needed mixed use commercial rather than requesting expansion of the UGA is in harmony with the anti-sprawl goals of the CP and the Act. *Downey v. Ferndale* 01-2-0011 (FDO 8-17-01)

The use of a program involving innovative techniques to establish proper CA buffering within agricultural zones appropriately balances Goals 6, 8, 9, and 10. *Mitchell v. Skagit County* 01-2-0004c (FDO 8-6-01)

An additional designation of municipal UGA areas that have existing sewer and water or that can be efficiently provided with the same, that are outside any floodplain designation and that impose a 1:5 lot size until the city completes a very detailed planning process complies with the Act. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

While it is difficult for a local government to comply with the public participation and requirements of the Act without a compliant public participation program, it is not impossible to do when specific locational decisions are made. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

A DR that precludes densities more intense than 1 du per 10 acres for ARLs within FFAs complies with the Act. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

A DR which demonstrates the clear intent of a county to continue the 1997 CP amendment process for technical errors or misapplication of CP criteria to a limited number of individual homeowners, complies with the Act. *FOSC v. Skagit County* 01-2-0002 (FDO 6-13-01)

The provisions of RCW 36.70A.070(6)(b) and RCW 36.70A.020(12) establish the concurrency requirement of the Act. Under the record in this case, San Juan County complied with the Act because water and sewage hookups must be "in place" at the time "development occurs," despite acknowledged work to be done on appropriate LOS levels for UGAs and LAMIRDs. *Mudd v. San Juan County* 01-2-0006c (FDO 5-30-01)

A county complies with the GMA in designating 5,200 acres of habitats of local importance and protecting those areas through HMPs which incorporate BAS. *WEAN v. Island County* 00-2-0054 (FDO 5-21-01)

A change in rural densities which reduces future developable acreage from 85,000 to 38, 000 under the unique facts and records in this case complies with the GMA. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The concept of establishing an unincorporated UGA at Eastsound and Lopez Village complied with the Act because the areas were "characterized by urban growth." *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

Under the record in this case, the County has complied with the goals and requirements of the Act as to affordable housing. A GMHB does not have authority to direct a local government to fund affordable housing policies and requirements. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The designations of priority species and species of local importance that include areas associated with or inhabited by threatened, endangered, and/or sensitive species as well as state candidate and monitor species, under the record in this case complies with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-14-01)

The substantial progress of Mason County towards compliance in RLs and CAs removes the previous noncompliance regarding sequencing. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

The record demonstrates compliance with RCW 36.70A.070(5)(d)(iii) in establishing and designating cottage industry/small scale business areas. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

Petitioner did not prove that the DRs for GHA areas fail to comply with the Act even though such DRs could have been more clearly set forth. *FOSC v. Skagit County* 00-2-0048c (FDO 2-6-01)

Adoption by a county of city DRs by reference to be applied within unincorporated UGAs complies with the Act except where the county fails to keep DRs current. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

A DR which clarifies uncertain terminology and which adopts criteria to satisfy the GMA requirement that qualified ARLs not in current use be included in the designation, complies with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 12-4-00)

A phased environmental review process under WAC 197-11-060(5)(b) for an amended DR that incorporated previous environmental documents, complied with the GMA. *Servais v. Bellingham* 00-2-0020 (FDO 10-26-00)

Where no large lots of rural land exists that can reasonably be restricted from a uniform 5 acre development, and where unique local circumstances exist, a uniform 5 acre development pattern does comply with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 10-12-00)

Where the record contains the only BAS that is available on a particular issue, petitioner fails to sustain its burden of proving noncompliance. *Carlson v. San Juan County* 00-2-0016 (FDO 9-15-00)

An FEIS is required to contain sufficient alternatives in its analysis to comply with WAC 197-11-442 and/or –440(5)(b) and thus to comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

An ordinance which authorized demonstration projects for wetland mitigation banks was found noncompliant. The GMA does not require a County to adopt wetland mitigation bank provisions. Therefore, the repeal of the ordinance after a finding of noncompliance brought the County into compliance with the GMA. *WGHOG v. Pacific County* 99-2-0019 (CO 5-22-00)

Where a County adopts appropriate criteria for designation of species and habitats of local importance the action complies with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

A finding of compliance for Mason County in its designation of forest lands of long-term commercial significance was made in accordance with the decision in *Manke v. Diehl* 91 Wn. App. 793 (1998). *Diehl v. Mason County* 95-2-0073 (CO 2-18-00)

A one-time redesignation of rural lands to correct mapping errors and misapplication of designation criteria that was postponed to the first amendment cycle as promised in the CP, was not required to comply with ESB 6094, and did comply with the GMA. *FOSC v. Skagit County* 99-2-0016 (FDO 9-7-99)

Allowance of a 10-acre minimum lot size within agricultural RLs with the associated possibility of 1 du per 5 acre densities in some areas as part of a clustering program, complies with and does not substantially interfere with the goals of the GMA. *Diehl v. Mason County* 95-2-0073 (CO 8-19-99)

The record demonstrated that a previous SCS map, which pointed out unique soils in Mason County, was incorrect and that no unique soils exist. Therefore, exclusion of unique soils as a designation criterion complied with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 8-19-99)

Use of a 50-foot buffer in rural lands and a 100-foot buffer in UGAs and rural lands of more intense development to segregate agricultural RLs from incompatible uses complies with the GMA. There is no specific GMA requirement for the minimum width of such buffers. *Diehl v. Mason County* 95-2-0073 (CO 8-19-99)

A county's change in the previous definition of "family," which was consistent with the adoption of the CTED model ADU ordinance, complied with the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

Where an ordinance sets definitive standards to implement the CP and location criteria for residential PUDs are set forth, compliance with the GMA is achieved. A local government is not required to structure PUD approval through a rezone process for every project. *CMV v. Mount Vernon* 98-2-0006 (CO 5-28-99)

Where the record showed compliance with RCW 36.70A.070(5) in designating rural centers because the county started at the correct beginning point, adopted appropriate criteria, and applied those criteria on a consistent basis and minimized and contained existing areas of more intense development, petitioner had not sustained its burden of showing the county's action was clearly erroneous. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

The removal of most agriculturally designated property from the UGA and the enactment of a transfer of development rights program by the city for the 17 acres of prime agricultural lands still within the city's UGA complied with the GMA. *Abenroth v. Skagit County* 97-2-0060 (CO 3-29-99)

Removal of approximately ½ square mile north of the UGA and 85% of the open space/agricultural designation south of the UGA, along with a record showing reasons for inclusion of the remaining agricultural lands within the UGA of Sedro-Woolley, complied with the GMA. *Abenroth v. Skagit County* 97-2-0060 (CO 3-29-99)

An interim CAO that contained a sunset provision (expiration date) did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (CO 7-1-97)

The failure to adopt DRs to preclude new urban residential, commercial and/or industrial growth and extension of urban governmental services outside IUGAs did not comply with the GMA. A local

government does not have authority to wait until adoption of its CP to take such action. *FOSC v. Skagit County* 95-2-0065 (CO 2-7-96)

> The establishment of an IUGA at the Port Townsend city limits complied with the GMA. Establishment of study areas for potential later inclusion within an UGA did not violate GMA. Under the GMA a GMHB does not have authority to specifically order a particular action to be taken by a local government. Therefore, the issue to be decided at a compliance hearing is whether the local government has complied with the GMA and not necessarily whether strict adherence to the FDO has been achieved. The specific mechanism for achieving compliance rests solely with a local government. *Port Townsend v. Jefferson County* 94-2-0006 (CO 12-14-94)

The failure to prohibit new urban development in existing undeveloped commercial and industrial zones outside an IUGA did not comply with the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (CO 12-14-94)

3. Hearing

Under RCW 36.70A.330(1) a compliance hearing and independent review of the action taken is required regardless of whether any party objects to the request for a finding of compliance. *Carlson v. San Juan County* 00-2-0016 (CO 4-10-01)

RCW 36.70A.330(2) allows standing in a compliance hearing to any petitioner in the previous case, as well as any participant who has standing to challenge the legislation enacted in response to the FDO remand. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Under RCW 36.70A.280 and .330 a compliance hearing must relate to and is governed by the original issues set forth in the FDO, as well as any new issues arising from the actions taken by the local government during the remand period. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

A GMHB may bifurcate the compliance aspect of a case from the invalidity rescission motions because of the short time frame allowed for invalidity rescission findings. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

The oft cited rule that the issue in a compliance hearing is compliance with the Act not necessarily with the FDO does not apply to a situation where a County revised its RL designations under the provisions of RCW 36.70A.130(2)(b) to "resolve" a GMHB appeal, where the RL designations were specifically not an issue in the FDO. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

Where a County adopts permanent DRs which are presumptively valid under RCW 36.70A.320, to implement a CP that was at the time also presumptively valid, compliance with the GMA requirement of permanent DRs was achieved. The issues of whether the DRs substantively complied with the Act would be resolved by separate hearing. *Panesko v. Lewis County* 98-2-0004 (CO 8-21-00)

The provisions of RCW 36.70A.330(2) do not provide for intervention standing during a compliance hearing. Intervention is governed by RCW 34.05.443(2) which authorizes a presiding officer to impose conditions upon an intervenor's participation at the time intervention is granted or at any subsequent time. *ICCGMC v. Island County* 98-2-0023 (MO 7-18-00)

Standing to participate in a compliance hearing is governed by RCW 36.70A.330(2). Both the petitioner and a person with standing to challenge the legislation enacted in response to the FDO have standing. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)

Where a Superior Court determines that no substantial evidence existed to support a county's prior RL designation, the proper issue at the subsequent compliance hearing is whether petitioners met their burden under the clearly erroneous standard to demonstrate that the new RL designations did not comply with the GMA, regardless of the correlation between the new designations and the designations reversed by the Superior Court. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

Where a local government has taken action on remand and no challenge to that action was made for the compliance hearing, compliance will be found. *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

The responsibility of a GMHB is to decide whether actions of a local government comply with the GMA rather than whether a better solution could have been found. *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

Where noncompliance was based on a failure to act, a compliance hearing for a new ordinance involved facial good-faith evidence in the limited record which, when combined with the presumption of validity under RCW 36.70A.320, resulted in a compliance finding and a requirement for a PFR to challenge the new ordinance. *Panesko v. Lewis County* 98-2-0004 (MO 6-12-98)

RCW 36.70A.320(2) establishes that the burden is on petitioners to prove noncompliance under the clearly erroneous standard. *TRG v. Oak Harbor* 96-2-0002 (CO 3-5-98)

Amendments to the CP adopted in order to achieve compliance are presumed valid and the increased deference of RCW 36.70A.3201 is to be afforded to local government decisions. *TRG v. Oak Harbor* 96-2-0002 (CO 3-5-98)

The ultimate issue to be decided in a compliance hearing is whether the local government now complies with the GMA, not particularly whether adherence to each specific remand issue has been achieved. *TRG v. Oak Harbor* 96-2-0002 (CO 3-5-98)

Where a superior court remand post-dated the 1997 amendments to the GMA, a GMHB will review the matter taking into account amendments that were made subsequent to the original action by the local government, particularly where no party objects to that procedure. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

Where there is no legislative action taken in response to a finding of noncompliance there is no presumption of validity to apply. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

The timelines established for compliance commence at the date that an order on reconsideration is entered. *CCNRC v. Clark County* 96-2-0017 (RO 1-21-98)

Under the new provisions of ESB 6094, the burden of showing noncompliance is on the petitioners. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

The 1997 amendment to RCW 36.70A.300(3)(b) grants new authority to a GMHB to extend the time for compliance to a period greater than 180 days under certain circumstances. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

Under the clearly erroneous standard in a compliance hearing a GMHB will examine the record in light of the policies, goals and requirements of the GMA to determine whether the local government has failed to comply. The ultimate issue is whether compliance with the GMA has been achieved, not

necessarily whether specific adherence to the remand order was achieved. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

Once or if a local government meets its burden of showing it no longer substantially interferes with the fulfillment of the goals of the GMA, the petitioner then bears the burden under the clearly erroneous standard of proving the action does not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

When a local government that had failed to act was subjected both to a determination of invalidity and noncompliance, then later took the required action, a facial review will be used to determine if substantial interference no longer applies. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

Regardless of whether a GMHB decision issued after July 27, 1997, involves either a new PFR or compliance hearing, the new clearly erroneous standard of review applies. *CCNRC v. Clark County* 96-2-0017 (CO 11-2-97)

Recent amendments to RCW 36.70A.330 now authorize a GMHB to hold multiple compliance hearings. *WEAN v. Island County* 95-2-0063 (CO 10-6-97)

Recent amendments to RCW 36.70A.330 now allow a local government subject to invalidity to bring a motion for the setting of a compliance hearing. The amendments do not prohibit a GMHB from setting a compliance hearing without a motion by the local government. *WEAN v. Island County* 95-2-0063 (CO 10-6-97)

RCW 36.70A.300 and .330 provide jurisdiction for a GMHB to review compliance of GMA actions with the SMA in subsequent compliance hearings since the goals and policies of the SMA and local SMP are now a part of the requirements of GMA under RCW 36.70A.480(1). *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

When the parties have mediated their differences and a new ordinance has been adopted and all parties support a finding of compliance, one will be made. *OEC v. Jefferson County* 94-2-0017 (CO 6-4-97)

Where parties were provided notice and an opportunity to participate in a compliance hearing but did not do so, then later filed a PFR involving claims that should have been raised during the compliance hearing process, those claims will be dismissed. *Wirch v. Clark County* 96-2-0035 (MO 1-29-97)

The ultimate question in a compliance hearing is whether there is compliance with the GMA, not necessarily whether there is specific compliance with the remand order. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

The burden of proof to show compliance is on the local government. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

Where ordinances incrementally adopted during the remand period are all readopted, a compliance hearing held at the end of the 180-day period of remand will include substantive review of all the ordinances if challenged by petitioners. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)

A respondent jurisdiction previously found to be noncompliant with the GMA has the burden of showing compliance. *WEC v. Whatcom County* 95-2-0071 (CO 9-12-96)

The GMA does not provide specific guidance to determine review within the scope of compliance hearings versus the necessity for a new PFR. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)

A prior finding of noncompliance for failure to adopt implementing DRs is cured when such regulations are adopted. Review of those regulations is by a PFR not by a compliance hearing. *Diehl v. Mason County* 95-2-0073 (CO 9-6-96)

When no previous determination of invalidity has been made, RCW 36.70A.330(3) requires a GMHB to consider whether invalidity should be found at the time of compliance hearing. *Seaview v. Pacific County* 95-2-0076 (CO 7-31-96)

When a local government on remand reanalyzes but readopts the same ordinance, where the remand was based on a lack of analysis for the initial adoption, a compliance hearing rather than a PFR is the proper vehicle for review. *Storedahl v. Clark County* 96-2-0016 (MO 7-25-96)

RCW 36.70A.330 requires that a GMHB reconsider any previous decision concerning invalidity at the time of a compliance hearing. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

The GMA requires that all compliance matters be completed within 180 days of the FDO. RCW 36.70A.330. *FOSC v. Skagit County* 95-2-0065 (CO 12-21-95)

Ultimately a GMHB has discretion to decide whether a new PFR or a compliance hearing is a proper vehicle to review compliance with the GMA, even in a situation where the local government has previously failed to act. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

When a petitioner and local government agree that a remand is necessary and no review of the action by a GMHB occurred, any subsequent request for review must be by means of a PFR rather than a compliance hearing. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The purpose of a compliance hearing is to determine compliance with the GMA, not compliance with a GMHB FDO. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

A FDO does not direct a local government specifically how to achieve compliance, but does provide guidance and suggestions that formed the basis of a finding of noncompliance. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

Recent amendments to RCW 36.70A.330 provide that a GMHB shall schedule additional compliance hearings as appropriate. The legislation is remedial and therefore retroactive. Additional hearings may be scheduled even if a compliance hearing is completed prior to the July 23, 1995, effective date of the amendments. *WEC v. Whatcom County* 94-2-0009 (CO 2-28-95)

Under RCW 36.70A.330, when invalidity has previously been found, a GMHB is required to issue a finding of compliance or noncompliance within 45 days of the filing of a motion by the petitioner or by the GMHB. The 45-day time period begins on the date a GMHB notifies the parties that a hearing is scheduled. *Port Townsend v. Jefferson County* 94-2-0006 (CO 12-14-94)

Matters which were not part of the original finding of noncompliance cannot be used at a compliance hearing to find a local government has failed to achieve compliance with the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (CO 12-14-94)

COMPREHENSIVE PLAN (CP)

A CP amendment which replaces low-density residential housing with mixed use commercial on an 85-acre tract of land encourages urban type development in an area characterized by "very low-density residential development." The city's decision to infill needed mixed use commercial rather than requesting expansion of the UGA is in harmony with the anti-sprawl goals of the CP and the Act. *Downey v. Ferndale* 01-2-0011 (FDO 8-17-01)

RCW 36.70A.470 prohibits the use of the "permitting process" for land use planning decisions. The stature requires the maintenance of an annual docketing list of proposed amendments to the CP or DRs. *Downey v. Ferndale* 01-2-0011 (FDO 8-17-01)

The use of RCW 36.70A.390 to adopt actions without a public hearing apply only to DRs and do not apply to CPs. Amendment of a CP through the use of this section does not comply with the Act. *Mudd v. San Juan County* 01-2-0006c (FDO 5-30-01)

A 1997 CP designation that was not appealed precludes GMHB jurisdiction when a later DR that is consistent with and implements the designation is adopted. *PRRVA v. Whatcom County* 00-2-0052 (FDO 4-6-01)

A local government's duty with regard to initially adopted RLs is vastly different than that with regard to CAs. Under section .060(1) a local government must adopt DRs to assure conservation of RLs in the initial planning stages. Those DRs remain in effect until implementing DRs are adopted contemporaneous with or subsequent to a CP. RL designations and DRs must be adopted anew and therefore jurisdiction exists to review the local government's action even if the designations and DRs are unchanged. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Critical area ordinances under RCW 36.70A.060(2) are not "interim" because a local government is not required to readopt such DRs but only to review them for consistency with the CP and implementing DRs under .060(3). *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The legislative scheme of the Act with regard to .040 and .130 requires that DR amendments go through the same annual review process as CP amendments. An "automatic" amendment to DRs upon approval of a specific permit application does not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A CFP must use the same population projections used in other parts of a CP. Internal consistency requires all elements of a CP to be based upon the same planning period and the same population projections. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Where a county fails to follow its own CP policies and to do a .070(5) rural analysis for an expansion of a rural village designation, compliance with the GMA is not achieved. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

The GMA does not allow expansion of original LOBs which were predominately delineated by the built environment existing on 7-1-90. LAMIRDs are not an appropriate target for commercial/industrial expansion. Expansion of the delineated LOBs constitutes "outfill" rather than "infill." *OEC v. Jefferson County* 00-2-0019 (FDO 11-22-00)

A change in a designation involving more than 600 acres, without public participation under a County defined "mapping error" approach, failed to comply with the GMA. *OEC v. Jefferson County* 00-2-0019 (FDO 11-22-00)

A CP and a SAP must fit together and no one feature of either plan may preclude achievement of any other feature of either plan. *Carlson v. San Juan County* 00-2-0016 (FDO 9-15-00)

Where a DR imposes additional limitations on permitees for only one island in the county and no CP policy or DR exists for any other island, internal consistency and compliance with GMA have not been achieved. *Carlson v. San Juan County* 00-2-0016 (FDO 9-15-00)

The redesignation of properties formerly in rural reserve to a new designation of rural resource that involved a lack of application of a local government's own criteria and which was also inconsistent with the CP, failed to comply with the Act. *FOSC v. Skagit County* 99-2-0016 (FDO 8-10-00)

The redesignation of an area to rural residential within a "sea of rural resource land" which was done because the rural resource land allowed certain activities, does not comply with the Act. A county may not permit certain activities in resource areas and then use the existence of those activities as a reason to redesignate resource areas to other categories. *FOSC v. Skagit County* 99-2-0016 (FDO 8-10-00)

When an IUGA ordinance dealing with restrictions on rural growth is superseded by an adopted CP, the issues in the case are not moot although they may well be addressed in a corresponding FDO in the CP process. Continued noncompliance and invalidity was found. *Smith v. Lewis County* 98-2-0011c (CO 7-13-00)

A prior finding of invalidity regarding an IUGA ordinance is not rescinded automatically by adoption of a CP, under the provisions of RCW 36.70A.302(7)(a). A local government must enact an ordinance in response to the invalidity, obtain a compliance hearing and a ruling that the "plan or regulation as amended" no longer substantially interferes with the fulfillment of the goals of the Act. A determination of invalidity remains in effect until such time as a local government asks for and receives a finding from a GMHB that the new action no longer substantially interferes with the goals of the Act. *Smith v. Lewis County* 98-2-0011c (CO 7-13-00)

Ambiguous and nondirective CP policies that fail to encourage development in urban areas or reduce sprawl and maps that are generalized and in many cases inaccurate in the designation of UGAs, did not comply with the Act. A CP must include objectives, principles and standards that are directive. DRs are to be consistent with and implement the CP and may not be used as a mechanism to automatically amend the CP or render it meaningless. Under the record in this case petitioner's burden of showing substantial interference with the goals of the Act has been satisfied. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County CP must identify open space corridors within and between UGAs and encourage the retention of open space and recreational opportunities. A CP which contains no analysis of existing and future needs nor identification of locations of open spaces or open space corridors and no text regarding policies encouraging and retaining recreational and open space opportunities does not comply with the Act. It was not compliant with the Act for the County to circumvent the CP and merely adopt DRs to fulfill this requirement. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

In the designation of an FCC, the CP must determine if the requirements of RCW 36.70A.350 could be met in the foreseeable future. DRs are not the appropriate time to fulfill this requirement. DRs for an

FCC must establish a system to ensure that an FCC urban designation is appropriately self-sufficient and contained. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

There is no authority in the GMA to apply a provisional or preliminary FCC designation. With no adherence to RCW 36.70A.350 in the CP and a purported provisional vesting designation, the designation substantially interferes with Goals 1, 2 and 12 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The designation of an industrial land bank area under RCW 36.70A.367 must comply with the criteria contained therein and must contain analysis and designation in the CP and not through later adopted DRs. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The inclusion of 263 acres of ARL within an ILB designation substantially interfered with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A purported ILB "reserve area" was without authority and did not comply with the GMA. The Legislature required only two sites to be designated ILB under RCW 36.70A.367. Additional designations substantially interfered with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

In determining compliance with the rural element, a CP must only include lands that are not otherwise designated as UGAs and not otherwise designated as RLs. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The rural element of a CP involves areas where a variety of uses and residential densities are allowed. A variety of uses and densities are to be established at a level that is consistent with the preservation of rural character and the requirements of .070(5). *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Rural character is a pattern of use and development in which open space, natural landscape and vegetation predominate over the built environment. Rural character fosters traditional rural lifestyles in a rural based economy, provides an opportunity for rural visual landscape and is compatible with uses by wildlife and for FWHCA and that reduces inappropriate conversion of undeveloped land into sprawling low-density development. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A rural element must provide for a variety of rural density uses, EPFs and rural government services. Storm or sanitary sewers except as allowed for health reasons under RCW 36.70A.110(4) are not authorized. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A rural element must protect the rural character of the area by containing and controlling rural development, assuring visual compatibility, reducing low-density sprawl, protecting critical areas and surface water and ground water resources and protecting against conflicts with the use of designated NRLs. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The adoption of a uniform 1 dwelling per 5 acres in the rural areas does not satisfy the requirements of .070(5) and substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The allowance of unlimited clustering does not comply with the Act when its purpose is to assure greater densities in rural and resource areas and not to conserve RLs and open space. When allowable clustering results in urban, and not rural, growth it substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A proper LAMIRD designation must be initially based upon "existing areas and uses" as established by the built environment on 7-1-93 (for Lewis County). Once the area and use determination has been made then a LOB is to be established which contains and limits expansion of those areas and uses through appropriate infill. LAMIRDs are a "limited" exception to allow for existing (7-1-93) greater densities and intensities but only for a fundamentally "rural" development. All LAMIRDs are subject to the provision of .070(5)(a), (b) and (c) except for (c)(ii) and (iii). *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A CP which designates 10 small town LAMIRDs, 7 crossroads commercial LAMIRDs, rural freeway interchange commercial areas on every freeway interchange in the County, 2 industrial LAMIRDs involving 357 acres and 920 acres, 5 lake area and 4 regular area shoreline LAMIRDs, a "floating" LAMIRD for tourist services and 12 suburban enclaves which consist of "preexisting non-rural development" does not comply with the Act and substantially interferes with the goals of the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County is not allowed to adopt an undefined, unmapped corridor-approach to transportation LOS measurement for purposes of concurrency which demonstrates no deficiencies while at the same time adopt a totally different methodology for funding applications which demonstrate significant transportation deficiencies, under the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Transportation policies contained in the CP must be consistent in order to comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County may not adopt such ambiguous standards to totally avoid concurrency requirements. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County is required to provide in its CP measures that provide for protection of quality and quantity of groundwater used for public water supplies. The County may not determine that water quality and quantity issues will be resolved in the permit process. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County is required to review drainage, flooding and stormwater run-off in its own area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute the waters of the state. The analysis must be included in a CP in order to comply with the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County is required to resolve floodplain and stormwater issues between it and its cities and make the CP policies consistent as required by RCW 36.70A.070(1). *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Where an ordinance is adopted after the filing of a PFR and after settlement discussions between the petitioner and the City, the provisions of RCW 36.70A.130(2)(b) allow a CP amendment to be adopted outside of the once per year CP revision requirement. *Achen v. Battleground* 99-2-0040 (FDO 5-16-00)

Where the City did not make a threshold determination prior to adopting a particular fire protection amendment to the CFP of the CP, SEPA has not been complied with and thus the City has failed to comply with the GMA. *Achen v. Battleground* 99-2-0040 (FDO 5-16-00)

Balancing of GMA goals can take place only after goals are met through compliance. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

Under RCW 36.70B.020(4) a "project permit" means that only site-specific rezones "authorized by a CP" are outside the jurisdiction of a GMHB. Project permits do not include the initial adoption of a CP amendment. The change to a map or any part of a CP invokes the jurisdiction of a GMHB. *Evergreen v. Washougal* 99-2-0042 (MO 2-17-00)

Where an ordinance sets definitive standards to implement the CP and locational criteria for residential PUDs are set forth, compliance with the GMA is achieved. A local government is not required to structure PUD approval through a rezone process for every project. *CMV v. Mount Vernon* 98-2-0006 (CO 5-28-99)

The GMA is clear that a CP and DRs are to be adopted first and that the subarea plan process is supplemental to the original CP. *Carlson v. San Juan County* 99-2-0008 (MO 5-3-99)

Under RCW 36.70A.130(1) every CP is subject to continuing review and evaluation. Where a CP has been adopted, is being used and has no sunset date, it is considered permanent under the GMA even though the CP referred to specific area as "interim" to be revisited after a study was completed. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

RCW 36.70A.070(1) requires a review of current "drainage, flooding, and stormwater runoff" and "guidance for corrective actions" to be included within the land use element of a CP. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

One of the fundamental purposes of a CP is to achieve transformance of local governance within the UGA such that cities are the primary providers of urban services. *Abenroth v. Skagit County* 97-2-0060 (FDO 9-23-98)

A CP policy directing minimum densities must be implemented by DRs that are consistent with it. Compliance cannot be found until both actions are complete. *Abenroth v. Skagit County* 97-2-0060 (FDO 9-23-98)

In light of the recent Supreme Court holding *Citizens v. Mount Vernon* 133 W.2d 861 (1997), a CP is merely a guide or blueprint. Thus it becomes necessary for local governments to be even more specific in fulfilling the requirement of RCW 36.70A.040(3)(d) to adopt DRs that are consistent with and implement the CP. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

Where an ordinance does not specify proposed locations of commercial and limited industrial districts it violates RCW 36.70A.070 that requires a map or maps and descriptive text location. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

A local government may not adopt language in its CP that is different than a specific requirement of the GMA. *TRG v. Oak Harbor* 97-2-0061 (FDO 3-5-98)

A CP is presumed valid upon adoption and a GMHB will find compliance with the GMA unless a petitioner or intervenor proves that the local government actions are clearly erroneous in view of the entire record and in light of the goals and requirements of the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

The readoption of RL designations in the CP process is subject to challenge by a PFR. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

The SMA and the SMP adopted by a local government are to be considered an element of a GMA CP. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

Where a CP was adopted, but was by its terms not effective until DRs were adopted and thereafter the local government repealed the initial adoption, the petitions challenging the CP were rendered moot and thus dismissed. *Ellis v. San Juan County* 97-2-0006 (FDO 6-19-97)

A local government does not comply with the GMA when it adopts a CP that does not go into effect until a time beyond a GMA deadline. *Ellis v. San Juan County* 97-2-0006 (FDO 6-19-97)

The process of balancing goals at the CP stage cannot include abandoning the conservation of designated agricultural lands. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

The GMA requires conservation of designated agricultural lands to be included within the CP. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

The policies set forth in a CP have the same directive affect as DRs. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

Under RCW 36.70A.070(1) a CP must provide for protection of quality and quantity of groundwater used for public water supplies. Such protection is different than and separate from an ordinance for CAs. The protection may be specifically included in the CP by regulation or later implemented by DRs. Compliance cannot be found until one or the other has been accomplished. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

A previously adopted CAO must be reviewed by the local government at the time of adoption of a CP to ensure consistency between the two. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

The GMA does not require a "one size fits all" approach. A GMHB is to be guided by a common sense appreciation of the size and resources of a local jurisdiction and the magnitude of the problems to be addressed. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

No CP will be the best it can be on its original adoption. Improvements and clarifications will always need to be made throughout the amendment process over the life of a 20-year plan. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

It is not the role of a GMHB to determine whether a CP could be improved. The role of the GMHB is to determine if the minimum requirements of the GMA have been met in the adoption of the CP. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

Definitionally RCW 36.70A.172(1) applies to designating and protecting CAs, but does not apply to a review of the CAO for consistency with the CP. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

The failure of a local government to adopt all parts of its CP by the GMA deadline does not preclude GMHB review of the portions that have been adopted. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)

Submission of the 10-year traffic forecast required by RCW 36.70A.070(6)(b)(iv) to CTED, but which was not included in the CP, did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A CP must comply with the stormwater drainage aspects of RCW 36.70A.070(1). *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The mere listing of existing facilities does not comply with the mandate of RCW 36.70A.070(1) to adopt drainage and stormwater goals, policies, strategies and regulations. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

RCW 36.70A.070(1) requires that CP policies and DRs to provide solutions for existing as well as future problems of stormwater drainage must be adopted. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A CP is no longer a binder full of pages whose main function is to be dusted. If it is in the plan, it must be implemented. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The entire city located partially within a GMA planning county and partially in a non-GMA planning county is required to plan under the GMA. *Woodland, Petitioner* 95-2-0068 (FDO 7-31-95)

A CP must be consistent with the policies and requirements of the SMA and the local SMP. *Moore-Clark v. La Conner* 94-2-0021 (FDO 5-11-95)

A CP is not a static document. Goals set forth in the plan are not guarantees. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

A regional transportation plan that provides regional coordination and discusses applicable LOS levels and is adopted in the CP complies with the GMA. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

The GMA does not prohibit planning beyond the year 2012. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

The GMA sequence requirements of designation and conservation of RLs, designation and protection of CAs, adoption of CPPs, establishment of interim UGAs, adoption of a CP and DRs are not mandatory, but it would be extremely difficult for a local government to comply with the GMA if a different sequence of actions was used. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

A CP must comply with the goals and requirements of the GMA. A CP must have uniform policies and standards throughout in order to achieve internal consistency. Any subarea plans are subject to the same level of scrutiny as the entire CP. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

CONCURRENCY

1. In General

Goal 12 of the GMA requires local governments to ensure that public facilities and services be adequate to serve the development at the time that it is available for occupancy, but does not require adequacy for densities beyond those existing at the time of availability so long as planning has been carried out that will ensure adequate public facilities and services for future denser occupancy. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

A County may not adopt such ambiguous standards to totally avoid concurrency requirements. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

WAC 365-195-070(3) defines concurrency as a situation in which adequate facilities are available when the impacts of development occur or within a specified time thereafter. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

WAC 365-195-210 defines adequate public facilities as ones which have the capacity to serve development without decreasing LOS below locally established minimums. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

WAC 365-195-210 defines available public facilities as including both a situation where facilities and services are in place or where a financial commitment is in place to provide the facilities or services within a specified time. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

The WAC 365-195-210 definition of concurrency includes the concepts of both adequate public facilities and available public facilities. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

A local government has the discretion to determine which public facilities and services are necessary to support development. In exercising its discretion a local government must consider all aspects of public facilities and services and make a reasoned decision as to which are necessary and how to subject those facilities and services to concurrency requirements. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

The word "ensure" found in RCW 36.70A.020(12) imposes a requirement on local governments to state what it plans to do and how that is to be accomplished in order to achieve concurrency compliance. More than a generalized policy statement is necessary to comply with the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

A local government has both the duty and the right to determine the adequacy of public facilities and services. Such a determination must first examine current adequacy level and then a local government's future ability to add to those facilities and services. A methodology to determine if sufficient capacity remains or can be added to serve a particular development application must be adopted. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

A local government has the discretion within the parameters of the GMA to determine proper phasing of concurrency. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

RCW 36.70A.020(12) imposes a requirement for local government to establish an objective baseline to determine minimum LOS standards for public facilities and services. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

RCW 36.70A.020(12) requires local governments to adopt either policies or regulations or a combination thereof that provide reasonable assurances, but not absolute guarantees, that the locally-defined public facilities and services necessary for future growth are adequate to serve that new growth, either at the time of occupancy and use or within an appropriately timed phasing of growth, connected to a clear and specific funding strategy. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

The concept of concurrency is not an end in and of itself, but a foundation for local governments to achieve the coordinated, consistent, sustainable growth called for by the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

Concurrency is not the same as infill. Infill relates to the phasing of growth and its primary purpose is to avoid inefficient use of land resources (sprawl). *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Concurrency is intended to ensure that at the time of new development public facilities and services are in place or are adequately planned. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Once a local government adopts concurrency policies, implementing DRs must be adopted that prohibit new development from causing previously established LOS standards to be violated. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

2. Traffic

A County is not allowed to adopt an undefined, unmapped corridor-approach to transportation LOS measurement for purposes of concurrency which demonstrates no deficiencies while at the same time adopt a totally different methodology for funding applications which demonstrate significant transportation deficiencies, under the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Transportation policies contained in the CP must be consistent in order to comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Under the language in RCW 36.70A.020(12), concurrency requirements for public facilities and services are not limited only to transportation concurrency. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

3. Sewer

The provisions of RCW 36.70A.070(6)(b) and RCW 36.70A.020(12) establish the concurrency requirement of the Act. Under the record in this case, San Juan County complied with the Act because water and sewage hookups must be "in place" at the time "development occurs," despite acknowledged work to be done on appropriate LOS levels for UGAs and LAMIRDs. *Mudd v. San Juan County* 01-2-0006c (FDO 5-30-01)

CONSISTENCY

A county's development regulation calling for "consistency and compatibility with the intent of the comprehensive plan" may not be considered compliant. Tying consistency to the "intent" of the plan rather than to the plain words of the plan itself, invites a series of decisions by different administrators or Boards of County Commissioners which would preclude consistency. It is therefore noncompliant. *Advocates for Responsible Development, Mason County Community Development Council, Janet Dawes, and John E. Diehl v Mason County*, 01-2-0025 (FDO 4-11-02)

Under the record and BAS in this case the county complied with the Act by removing an inconsistency in definitional criteria for Type 1-5 waters. The county's choice not to adopt the new DNR definition of Type 3 waters found in WAC 242-16-030 was not an amendment to its CAO and was not clearly erroneous. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

A CFP must use the same population projections used in other parts of a CP. Internal consistency requires all elements of a CP to be based upon the same planning period and the same population projections. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Where CAO provisions are in addition to the SMP, there is no inconsistency between the CAO and the SMP. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

A CP and a SAP must fit together and no one feature of either plan may preclude achievement of any other feature of either plan. *Carlson v. San Juan County* 00-2-0016 (FDO 9-15-00)

Where a DR imposes additional limitations on permitees for only one island in the county and no CP policy or DR exists for any other island, internal consistency and compliance with GMA have not been achieved. *Carlson v. San Juan County* 00-2-0016 (FDO 9-15-00)

A County is not allowed to adopt an undefined, unmapped corridor-approach to transportation LOS measurement for purposes of concurrency which demonstrates no deficiencies while at the same time adopt a totally different methodology for funding applications which demonstrate significant transportation deficiencies, under the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Transportation policies contained in the CP must be consistent in order to comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County is required to resolve floodplain and stormwater issues between it and its cities and make the CP policies consistent as required by RCW 36.70A.070(1). *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Densities shown on official maps must be consistent with CP criteria and GMA standards. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

There is both a requirement of internal consistency within a CP, WAC 365-195-500, and of consistency between DRs and the CP as defined in WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

The consistency required between DRs and the CP means that no feature of the plan or regulation is incompatible with any other feature of a plan or regulation. WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

An ordinance which was designed to implement the goals and objectives of an economic development plan as an element of the CP, but which did not specify any locations of proposed commercial or limited industrial districts, did not comply with the requirement found in RCW 36.70A.040(3)(d) requiring consistency between the plan and DRs. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

If the required analysis of a CFE shows a significant funding shortfall it is a county's duty to reassess land use and related elements of the CP so that the plan is internally and externally consistent. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

RCW 36.70A.130 requires that any amendments to DRs shall be consistent with and implement the CP. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

A SMP element of a CP and/or DR must be internally consistent and consistent with all other aspects of a CP and DRs adopted by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

Consistency between a CP and DRs and a SMP must be achieved immediately by a local government. The 24-month grace period set forth in RCW 90.58.060 relating to guidelines adopted by the DOE does not apply to GMA adoptions by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

The mere adoption of a pre-existing land use map and underlying residential densities within designated agricultural lands without a review for consistency did not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

An action designating agricultural lands of long-term significance but thereafter readopting underlying rural residential densities created an inherent conflict and did not satisfy the consistency requirement of the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

A designation ordinance that required a minimum 40-acre parcel, but also allowed subdivision into two 20-acre parcels, was inconsistent with a criterion to eliminate 20-acre parcels for resource designation. One or the other must be changed to comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (CO 4-9-97)

A CAO must be consistent with regard to the affect of misinformation that may be provided by an applicant in a checklist and the remedies allowed local government once the application has been completed. There is no private property right to provide false or incorrect information. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

Where a county CP has previously been determined to not comply with the GMA, under RCW 36.70A.100 a city does not need to make its CP consistent with that of the county. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

While a CAO must be consistent with the CP, it does not specifically need to be analyzed for consistency with a land capacity analysis. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

Definitionally RCW 36.70A.172(1) applies to designating and protecting CAs, but does not apply to a review of the CAO for consistency with the CP. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

In order the achieve the consistency required by the GMA, a county and each of its cities must start from the same point and follow the agreements set forth in the CPPs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Pre-existing zoning code provisions adopted by reference without a clear statement of how they support conservation of RLs were shown to be internally inconsistent, and thus could not be consistent with the GMA or CPPs. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

Where each city agreed to adopt a CP and DRs consistent with the ones last adopted by the county, a later showing of inconsistency proves noncompliance with the GMA. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

A County has the responsibility to adopt an internally consistent CP and to adopt DRs that are consistent with and implement the CP. *CICC v. Island County* 95-2-0072 (FDO 12-6-95)

In order to comply with the GMA requirement of reviewing a CAO for consistency with the CP, local decision-makers must be aware of the DRs and provisions of the CP dealing with CAs, and must allow

an opportunity for the public to comment upon and be involved in the review process. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The incorporation of a different entity's plan for capital facilities without review to ensure consistency to achieve the goals and requirements of the GMA does not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Where no timely appeal of a wetlands ordinance was taken, there is no jurisdiction for a GMHB to review that ordinance at the time of adoption of the CP except for consistency with the CP. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)

A CP must be consistent with the policies and requirements of the SMA and the local SMP. *Moore-Clark v. La Conner* 94-2-0021 (FDO 5-11-95)

A CP and any subarea plan contained therein must be internally consistent. Internal consistency is defined by WAC 365-195-500. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

CONSOLIDATION/COORDINATION

A county motion to consolidate will be denied where two separate cases involve some similar issues and some similar parties, but which would create an administrative nightmare in the event of necessity to certify the record for appeal, where parts of each case are already on appeal and where the county has failed to demonstrate any compelling reason to consolidate. *Diehl v. Mason County* 96-2-0023c (MO 8-24-01)

A party who is a petitioner in a consolidated case does not qualify as a petitioner for purposes of standing for the compliance hearing where the compliance hearing issue was not part of the party's original PFR nor brief or argued by that party during the HOM process. *ICCGMC v. Island County 98-2-0023* (MO 2-18-00)

Where three separate petitions challenge the same ordinance it is appropriate to consolidate under the provision of RCW 36.70A.290(5). *Smith v. Lewis County* 98-2-0011 (MO 7-14-98)

Consolidation will be ordered, even over the objection of a party, when the cases are substantially the same and more efficient use of time for both the parties and the GMHB will occur from consolidation. *CMV v. Mount Vernon* 97-2-0063 and 98-2-0006 (MO 4-2-98)

Where cases are substantially identical and scheduling two hearings instead of one would be an inefficient process, consolidation will be ordered. *CMV v. Mount Vernon* 98-2-0006 (MO 4-2-98)

Where 61 separate petitions were filed by 85 different petitioners against Clark County and each of the cities within it and 44 separate parties were thereafter granted intervenor status, an order of consolidation issued immediately prior to the FDO in order to avoid each petitioner having to serve pleadings on over 100 other parties, was an appropriate method of consolidation. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Once consolidation has occurred the individual petitions for review are merged and lose their independence. All issues presented by any of the petitions are available to be argued by any party to the proceeding. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

The authority to consolidate cases is found in RCW 36.70A.290(5) and WAC 242-02-522(10). A FDO shall be entered within 180 days of the receipt of the last PFR that is consolidated. *Port Townsend v. Jefferson County* 94-2-0006 (MO 4-13-94)

COUNTYWIDE PLANNING POLICIES (CPPS)

CPPs may not conflict with GMA goals. Amending a CPP may not be used as justification for failure to comply with the Act. Where a framework analysis is provided and establishes the procedure to amend a county CPP's, the procedure must be followed in order to comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

While the CPPs do have a directive nature, a recent court of appeals decision (*King County v. FOTL)* also held that the CPPs must be consistent with the GMA in order to have such directive affect. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)

A change in a market factor analysis from what was agreed to in a CPP did not comply with the GMA and could not be used as a basis for a recision of invalidity. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)

A CPP which assigns population to a noncontiguous UGA without any land capacity analysis showing a need for such allocation may not be used as a justification for failure to comply with the requirements of the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

Only cities or the Governor may challenge a CPP adoption or amendment. *FOSC v. Skagit County* 96-2-0032 (MO 3-7-97)

CPPs play a major role in determining proper IUGAs. CPPs must comply with the GMA and cannot be used as a justification for failure of an IUGA to comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

In order the achieve the consistency required by the GMA, a county and each of its cities must start from the same point and follow the agreements set forth in the CPPs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Cities and counties are both required to adhere to the CPPs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

CPPs are the framework for development of a CP and apply to GMA actions taken prior to adoption of the CP. *FOSC v. Skagit County* 95-2-0065 (CO 2-7-96)

CPPs and their offshoot, the community framework plan, establish goals and requirements that must be complied with in order to comply with the GMA. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

The absence of language within a DR that prohibits extension of urban governmental services outside an IUGA did not comply with the CPPs and therefore did not comply with the GMA. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

A CP and any subarea plans contained therein must be consistent with the adopted CPPs. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

CRITICAL AQUIFER RECHARGE AREAS – *SEE* CAS

CRITICAL AREAS (CAS)

1. In General

A county has wide discretion in determining which plant species and/or habitats have sufficient local importance to warrant designation and protection as species of local importance. *ICCGMC v. Island County* 98-2-0023c (CO 11-26-01)

Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The use of a program involving innovative techniques to establish proper CA buffering within agricultural zones appropriately balances Goals 6, 8, 9, and 10. *Mitchell v. Skagit County* 01-2-0004c (FDO 8-6-01)

A county complies with the GMA in designating 5,200 acres of habitats of local importance and protecting those areas through HMPs which incorporate BAS. *WEAN v. Island County* 00-2-0054 (FDO 5-21-01)

Blanket exemptions in CAs often create disincentives for adequate protection *Diehl v. Mason County* 95-2-0073 (CO 3-14-01)

A re-adoption of a previous CA ordinance that does not involve any changes after the consistency review does not invoke jurisdiction to review the substance of the original CA ordinance. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Critical area ordinances under RCW 36.70A.060(2) are not "interim" because a local government is not required to readopt such DRs but only to review them for consistency with the CP and implementing DRs under .060(3). *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

BAS was not satisfied where the record contained no scientific support of reduced buffers for activities defined as minor new development. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

A local government must regulate preexisting uses in order to fulfill its duty to protect critical areas. GMA requires any exemption for preexisting use to be limited and carefully crafted. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

A complete exemption of ongoing agricultural activities does not comply with the Act. A local government must balance the goals and requirements of the Act for only those resource activities that occur within a designated RL area. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

Where a CAO provisions are in addition to the SMP, there is no inconsistency between the CAO and the SMP. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

An exemption from CA protection for ongoing agriculture activities must be limited to lands designated as ARLs under RCW 36.70A.170. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

A CA exemption for ongoing agriculture in a rural residential zone where the record contains no information of how many acres within the zone are being "farmed", where those areas are and what the cumulative impact might be on CAs does not comply with the Act. The balancing of CA protections with RL conservation can only apply to lands designated RLs. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

The GMA requires a local government to adopt DRs that protect designated CAs. In discharging its duty to protect CAs a local government must include BAS and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

In deciding whether BAS has been accomplished a GMHB will review the scientific evidence contained in the record, determine whether the analysis by the local decision-maker of the scientific evidence and other factors involved a reason process and whether the decision by the local government was within the parameters of the GMA under RCW 36.70A.172(1). *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

The provisions of BAS directing both preservation and enhancement of anadromous fish limits the discretion available to local governments and requires a more heavily weighted towards science decision. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

Under *HEAL v. GMHB*, 96 Wn. App. 522 (1999) a local government has the authority and obligation to take scientific evidence and balance it among the goals and requirements of the GMA. However, the case inaccurately refers to the burden on petitioners to prove a local government acted "arbitrarily or capriciously." The case also apparently holds that scientific evidence must play a major role in the context of critical areas. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

A 25-foot riparian buffer zone even if it is a managed, compact buffer zone for ongoing agricultural activities in a designated ALR was below the range of BAS as shown by the record. It did not fall within the range of peer tested BAS in the record. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

Adoption of an "interim" CAO is not authorized by the GMA and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

A CAO that exempts Type 4 and 5 non salmon-bearing waters and does not provide for any buffering of those types of streams is not within the range of BAS and does not comply with the Act. *FOSC v.*

Skagit County 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

An ordinance which authorized demonstration projects for wetland mitigation banks was found noncompliant. The GMA does not require a County to adopt wetland mitigation bank provisions. Therefore, the repeal of the ordinance after a finding of noncompliance brought the County into compliance with the GMA. *WGHOG v. Pacific County* 99-2-0019 (CO 5-22-00)

A requirement for "minimized vegetation removal" is not a DR standard that complies with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A local government failed to include BAS in its efforts to protect shellfish areas by relying on a pre-GMA SMP that clearly had inadequate buffers and thus did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

An administrative discretion to reduce buffers by 25% and preclude gathering of information to justify greater buffer widths does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

The "special consideration" language relating to anadromous fish under RCW 36.70A.172(1) requires a result more heavily weighted towards science than might otherwise be required under the BAS provisions of the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A provision that allows reduction of shoreline buffer areas through buffer averaging of existing residential setbacks, even with a requirement for a HMP, does not include BAS and does not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

The GMA requirement to protect CAs directs a local government to adopt appropriate and specific criteria and/or standards. *Willapa v. Pacific County* 99-2-0019 (FDO 10-28-99)

Only "critical" ARAs are required to be designated and protected. *ARD v. Shelton* 98-2-0005 (CO 6-17-99)

DRs which are proportional, reasonable, and flexible are excellent goals as long as the functions and values of CAs are maintained. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

The prohibition found in RCW 36.70A.060 against interference with existing uses applies only to RLs and not to CAs. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

The discretion of a local government in designating and protecting CAs is limited by the requirements to: (1) ensure compliance with the GMA, (2) protect CAs, (3) ensure no net loss of CA functions, and (4) include BAS. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

If BMPs are relied upon for protection of CAs, some type of monitoring and enforcement must be included to ensure that the BMP plans are actually implemented and followed. BMPs may be voluntary and individually developed but benchmarks, timeframes and monitoring must be established to ensure actual protection. There must also be a non-voluntary fallback approach. BAS applies directly to such BMPs. *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

The GMA gives protection to designated agriculture RLs from incompatible adjacent uses and brings into play the balancing act between GMA's goals for the conservation of agricultural industry and

protection of CAs. The price paid for that deference is removal of development potential. *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

While RCW 36.70A.060 precludes prohibition of legally existing uses, regulation is still required by the GMA. A blanket exemption of existing uses from all protection is a disincentive to adequate protection of CAs. *ARD v. Shelton* 98-2-0005 (FDO 8-10-98)

The protection of CAs is a function of RCW 36.70A.060 and .170, not the UGA provisions of .110. *Wells v. Whatcom County* 97-2-0030 (FDO 1-16-98)

The protection of CAs is a function of a proper ordinance, not by the establishment of an UGA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

The petitioner has the burden of demonstrating by a preponderance of the evidence in the record that the methods chosen by the local government to designate and protect CAs and their buffers do not comply with the goals and requirements of the GMA. It is not the role of a GMHB to determine if the ordinance might have been done differently or better. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

All CAs must be designated and while all CAs need not be protected a detailed and reasoned justification for any CAs not protected must be made. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

Where CAs are designated and the Forest Practices Act provides a local government with some authority to act, the GMA requires a local government to protect CAs and their buffers within the scope of that authority. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

A CAO must be consistent with regard to the affect of misinformation that may be provided by an applicant in a checklist and the remedies allowed local government once the application has been completed. There is no private property right to provide false or incorrect information. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

The provision of RCW 36.70A.060(1) that regulations cannot prohibit uses lawfully existing on the date of their adoption pertain to RLs and are not included in RCW 37.70A.060(2) pertaining to CAs. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

CAs may be designated by performance standards. WAC 365-190-040(2)(d). *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

Even if there is a GMA provision that precludes prohibition of pre-existing uses in CAs, the GMA not only allows but also requires a local government to reasonably regulate existing activities that are shown in the record to be damaging to CAs and their buffers. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

CAs upon which exempted activities occur are still designated CAs. Exemptions are a means to lessen protection of CAs for certain activities. The real question is whether the exemptions are supported by reasoned choices based upon appropriate factors actually considered as contained in the record. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

Under the evidence shown in this record, adoption of SEPA policies did not fulfill the mandatory requirement of RCW 36.70A.060(2) to adopt DRs that protect CAs. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

The provisions of RCW 36.70A.172 apply only to CAs and do not apply to purely stormwater issues. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

The requirements of RCW 36.70A.172(1) require a local government to use BAS when designating and protecting CAs to protect their functions and values. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

The designation of a CA should include a classification scheme and general location determination or performance standards for specific locations. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

A local government is required to substantively include BAS in the designation and protection of CAs. Consideration only is not sufficient to comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

A previously adopted CAO must be reviewed by the local government at the time of adoption of a CP to ensure consistency between the two. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

Simply listing pre-GMA statutes and regulations did not comply with the GMA requirement to protect CAs. The record must reflect how such regulations and laws were sufficient to protect CAs and reflect that public participation requirements had been completed in order to comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (CO 9-12-96)

A DR that only stated an intention to develop criteria guiding the administrator's discretion did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (CO 9-12-96)

A CA DR is not "interim" in nature. Nothing in RCW 36.70A.060 requires local governments to amend or alter a previously adopted CAO at the time of adoption of the CP or implementing DRs. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)

A review process for a previously adopted CAO for the purpose of ensuring consistency with a later adopted CP that resulted in readoption without substantive change did not grant jurisdiction to a GMHB to review the substance of the previously adopted CAO. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)

The GMA requires a type of stewardship protection of CAs and conservation of RLs. *Diehl v. Mason County* 95-2-0073 (CO 9-6-96)

CAOs are not interim. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

CA DRs are neither temporary nor interim measures. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

All CAs must be designated and while all CAs need not be protected, a detailed and reasoned justification for any CAs not protected must be contained in the record. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

A local government may protect CAs by affording a measure of discretion to the administrator of the DR but such delegation must include clear and detailed criteria. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

A previously adopted CAO is not "interim" since the GMA does not require adoption of new designations and DRs in the CP, as is the case with RLs. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Reliance on pre-GMA designations and regulations without public participation and new legislative action did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

For DRs adopted in 1991, after a later adoption of a CP the role of a GMHB is to determine whether such DRs are consistent with the CP. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The GMA sequence requirements of designation and conservation of RLs, designation and protection of CAs, adoption of CPPs, establishment of interim UGAs, adoption of a CP and DRs are not mandatory, but it would be extremely difficult for a local government to comply with the GMA if a different sequence of actions was used. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

RL regulations and CA regulations are treated differently in the GMA. RL regulations have a certain expiration date at the time of adoption of DRs for the CP. No such expiration date is found in the CA DRs section. *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94)

There is nothing in the GMA that requires or even allows CAs to be interim. *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94)

> RCW 36.70A.060(2) requires that <u>all</u> cities and counties in the state adopt DRs for CAs previously designated under Section .170. *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

The adoption of CA DRs immediately grants jurisdiction for review of compliance with the GMA. If jurisdiction did not attach until completion of the CP or implementing DRs, review at that time would be limited to consistency under RCW 36.70A.060(3). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

> CA DRs are independent of, and different than, CP implementing DRs and are reviewable after adoption even if a CP has not yet been adopted. RCW 36.70A.060(2). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

2. Designations

Both the Growth Management Act and the county's own comprehensive plan require a county to protect not only those places where freshwater enters the ground, but also the aquifers that they feed. The county must classify and designate seawater intrusion areas as critical areas, including best available science in a substantive way. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 9)

Although the county claimed that the data in the record were not adequate to designate vulnerable seawater intrusion areas, that does not nullify the county's obligation to take action to designate and protect CARAs including aquifers used for potable water. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 9)

A county's decision to use a different approach then previously adopted does not necessarily make that choice non-GMA compliant. However, the new approach must comply with the Act. The county's approach of failing to designate any vulnerable seawater intrusion areas as critical areas does not comply with the Act. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 9)

It makes great sense for the intergovernmental planning group to study water issues on a watershed basis. However, that group has no authority to take binding action on this issue. The county cannot abdicate its GMA responsibility for seawater intrusion designation to the planning group. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 9)

Mason County failed to meet its burden of showing removal of substantial interference in its FFA ordinance. *Diehl v. Mason County* 95-2-0073 (CO 7-24-00)

A local government that ignores BAS recommendations from agencies with expertise, applies BAS for healthy streams to degraded ones and precludes the timely submission of agency BAS recommendations does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A local government's failure to include designation of species of local importance for FWHCAs does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A local government failed to include BAS in its efforts to protect shellfish areas by relying on a pre-GMA SMP that clearly had inadequate buffers and thus did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the failure to adopt compliant designations and DRs which were due 9-1-92, substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

Where a County adopts appropriate criteria for designation of species and habitats of local importance the action complies with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

CAs may be designated by performance standards. WAC 365-190-040(2)(d). *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

CAs upon which exempted activities occur are still designated CAs. Exemptions are a means to lessen protection of CAs for certain activities. The real question is whether the exemptions are supported by reasoned choices based upon appropriate factors actually considered as contained in the record. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

The designation of a CA should include a classification scheme and general location determination or performance standards for specific locations. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

The GMA requires that all wetlands be designated as CAs. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

a. Wetlands

Increased protections adopted for Type 4 and 5 waters that feed into salmon bearing streams are found to comply under the record in this case. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

Where a range of recommendations from sources with expertise was considered and wetland buffers were established at the minimum end of the scientifically accepted scale but were within the BAS range, GMA compliance was achieved. *Diehl v. Mason County* 95-2-0073 (CO 9-18-97)

Where a previous noncompliant buffer system for wetlands was actually reduced by a CAO amendment, the reduction did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (CO 9-12-96)

Where all wetlands receive designation and/or protection under an "interim" CAO or the SMP, compliance with the GMA on that point has been achieved. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

The GMA requires that all wetlands be designated as CAs. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

The exemption of 19% of all wetlands in Whatcom County without any evidence in the record of a reasoned consideration of such exclusion did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

b. Frequently-Flooded Areas (FFAs)

An FFA designation must be clearly mapped and must include buffers sufficient to protect critical area functions and values. *Diehl v. Mason County* 95-2-0073 (CO 7-24-00)

Mason County failed to meet its burden of showing removal of substantial interference in its FFA ordinance. *Diehl v. Mason County* 95-2-0073 (CO 7-24-00)

c. Geologically Hazardous Areas (GHAs)

A requirement for geotechnical assessment which does not include definitive standards in a DR against which the assessment can be measured does not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

The County's failure to designate geologically hazardous areas other than those involving 40% plus slopes under the record in this case did not comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

d. Critical Acquifer Recharge Areas (CARAs)

Both the Growth Management Act and the county's own comprehensive plan require a county to protect not only those places where freshwater enters the ground, but also the aquifers that they feed. The county must classify and designate seawater intrusion areas as critical areas, including best available science, in a substantive way. *Olympic Environmental Council v. Jefferson County,* 01-2-0015 (FDO 1-10-02, p. 9)

Although the county claimed that the data in the record was not adequate to designate vulnerable seawater intrusion areas, that does not nullify the county's obligation to take action to designate and protect CARAs including aquifers used for potable water. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 9)

A county's decision to use a different approach then previously adopted does not necessarily make that choice non-GMA compliant. However, the new approach must comply with the Act. The county's

approach of failing to designate any vulnerable seawater intrusion areas as critical areas does not comply with the Act. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 9)

It makes great sense for the intergovernmental planning group to study water issues on a watershed basis. However, that group has no authority to take binding action on this issue. The county cannot abdicate its GMA responsibility for seawater intrusion designation to the planning group. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 9)

WAC 365-195-030 defines CARAs as including a requirement only to designate areas that are vulnerable to contamination of drinking water. *ARD v. Shelton* 98-2-0005 (CO 6-17-99)

Where the record demonstrated the existence of class III CARAs but a lack of knowledge as to their actual extent and degree of vulnerability, a decision by local government to take no action did not comply with the GMA. *ARD v. Shelton* 98-2-0005 (FDO 8-10-98)

e. Fish and Wildlife Habitat Conservation Areas (FWHCA)

A county has wide discretion in determining which plant species and/or habitats have sufficient local importance to warrant designation and protection as species of local importance. *ICCGMC v. Island County* 98-2-0023c (CO 11-26-01)

A county complies with the GMA in designating 5,200 acres of habitats of local importance and protecting those areas through HMPs which incorporate BAS. *WEAN v. Island County* 00-2-0054 (FDO 5-21-01)

The designations of priority species and species of local importance that include areas associated with or inhabited by threatened, endangered, and/or sensitive species as well as state candidate and monitor species, under the record in this case complies with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-14-01)

A local government's failure to include designation of species of local importance for FWHCAs does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the failure to adopt compliant designations and DRs which were due 9-1-92, substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

Where a County adopts appropriate criteria for designation of species and habitats of local importance the action complies with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

The record in this case supported the need to designate high quality and rare habitat areas to prevent isolated sub-populations of species and maintain plant communities and ecosystems. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

Where the scientific evidence in support of designations of habitats of local importance was unrefuted and only a future designation process was established, compliance was not achieved. *CCNRC v. Clark County* 96-2-0017 (CO 11-2-97)

An ordinance which directed the adoption of Department of Fish and Wildlife's priority habitat and species areas did comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

The failure to designate FWHCAs of local importance under WAC 365-190-080(5)(a)(ii) and (c)(ii) did not comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

The omission of a shellfish area designation in Whatcom County, where shellfish harvesting is a significant enterprise, did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

3. Development Regulations (DRs)

The county must substantively apply the best available science in the record in adoption of its final Unified Development Code as regards to seawater intrusion areas. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 9)

Under GMA, the county must protect its groundwater consistent with best available science. Further, per GMA Goal 10, the county has the overriding responsibility to protect its groundwater quality whether or not it has officially designated seawater intrusion areas as CARAs. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 16)

We are not persuaded by a county's argument that it has no authority to impose some form of water conservation measures, limiting the number of new wells allowed, or other measures to reduce the withdrawal of groundwater from individual wells if that withdrawal would disrupt the seawater/freshwater balance and lead to greater seawater intrusion. The exemption of RCW 90.44.050 does not limit a local jurisdiction from complying with its mandate for protection of groundwater quality and quantity under the GMA. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 16)

If the county wishes to adopt less-than precautionary protection standards and Best Management Practices, an adaptive management program must be developed and implemented that would ensure that monitoring of new and existing wells would continue and more strict protective action were planned for and ready to implement at once if the adopted strategies are not adequate. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 17)

Upon remand, the county must adopt regulations in its Unified Development Code which are consistent with and fully implement the comprehensive plan goals and policies related to aquifer protection. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 18)

The GMA does not require counties to adopt strategic plans for the protection of anadromous fish. However, since the county has not adopted a mandatory fallback approach to ensure the protection of critical areas and anadromous fish (in lieu of a compliant strategic plan), it remains in noncompliance. *Swinomish Indian Tribal Community v. Skagit County*, 02-2-0012c (FDO and CO 12-30-02, p. 30)

A local government must regulate preexisting uses in order to fulfill its duty to protect critical areas. GMA requires any exemption for preexisting use to be limited and carefully crafted. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

A complete exemption of ongoing agricultural activities does not comply with the Act. A local government must balance the goals and requirements of the Act for only those resource activities that occur within a designated RL area. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

Substantial interference with the goals of the Act is removed where buffer sizes are increased and HMPs are required prior to development in HCAs. *Diehl v. Mason County* 95-2-0073 (CO 12-1-00)

An exemption from CA protection for ongoing agriculture activities must be limited to lands designated as ARLs under RCW 36.70A.170. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

A CA exemption for ongoing agriculture in a rural residential zone where the record contains no information of how many acres within the zone are being "farmed", where those areas are and what the cumulative impact might be on CAs does not comply with the Act. The balancing of CA protections with RL conservation can only apply to lands designated RLs. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

Under the BAS contained in this record a category B wetland buffer that was increased to 50 feet complied with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

In order to remove a previously imposed finding of invalidity the County must make a 50-foot buffer requirement applicable to all Type 5 streams. The County in this case has not sustained its burden of showing its action removed substantial interference with the goals of the Act. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

A CAO that exempts any stream buffer with armoring from CA protection is not BAS and does not comply with the GMA. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

Where a shoreline buffer reduction provision requires a geotechnical study to insure the setback would preclude the need for hard-armoring for the lifetime of the residence and which provides for native vegetation retention, the ordinance complies with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 10-12-00)

Adoption of an "interim" CAO is not authorized by the GMA and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

An FFA designation must be clearly mapped and must include buffers sufficient to protect critical area functions and values. *Diehl v. Mason County* 95-2-0073 (CO 7-24-00)

Mason County failed to meet its burden of showing removal of substantial interference in its FFA ordinance. *Diehl v. Mason County* 95-2-0073 (CO 7-24-00)

A requirement for geotechnical assessment which does not include definitive standards in a DR against which the assessment can be measured does not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A requirement for "minimized vegetation removal" is not a DR standard that complies with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A provision that allows reduction of shoreline buffer areas through buffer averaging of existing residential setbacks, even with a requirement for a HMP, does not include BAS and does not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

The GMA gives protection to designated agriculture RLs from incompatible adjacent uses and brings into play the balancing act between GMA's goals for the conservation of agricultural industry and protection of CAs. The price paid for that deference is removal of development potential. *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

While RCW 36.70A.060 precludes prohibition of legally existing uses, regulation is still required by the GMA. A blanket exemption of existing uses from all protection is a disincentive to adequate protection of CAs. *ARD v. Shelton* 98-2-0005 (FDO 8-10-98)

A separate CA permit is not required by the GMA, but in order to comply with the GMA the ordinance must be clear that no adverse alteration to CAs or their buffers' functions and values can occur and that, if damaged, buffers must be allowed to rehabilitate to their pre-damaged purpose and function. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

The provision of RCW 36.70A.060(1) that regulations cannot prohibit uses lawfully existing on the date of their adoption pertain to RLs and are not included in RCW 37.70A.060(2) pertaining to CAs. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

Even if there is a GMA provision that precludes prohibition of pre-existing uses in CAs, the GMA not only allows but also requires a local government to reasonably regulate existing activities that are shown in the record to be damaging to CAs and their buffers. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

Under the evidence shown in this record, adoption of SEPA policies did not fulfill the mandatory requirement of RCW 36.70A.060(2) to adopt DRs that protect CAs. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

A previously adopted CAO must be reviewed by the local government at the time of adoption of a CP to ensure consistency between the two. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

Simply listing pre-GMA statutes and regulations did not comply with the GMA requirement to protect CAs. The record must reflect how such regulations and laws were sufficient to protect CAs and reflect that public participation requirements had been completed in order to comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (CO 9-12-96)

A DR that only stated an intention to develop criteria guiding the administrator's discretion did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (CO 9-12-96)

A CA DR is not "interim" in nature. Nothing in RCW 36.70A.060 requires local governments to amend or alter a previously adopted CAO at the time of adoption of the CP or implementing DRs. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)

A review process for a previously adopted CAO for the purpose of ensuring consistency with a later adopted CP that resulted in readoption without substantive change did not grant jurisdiction to a GMHB to review the substance of the previously adopted CAO. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)

CAOs are not interim. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

CA DRs are neither temporary nor interim measures. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

A previously adopted CAO is not "interim" since the GMA does not require adoption of new designations and DRs in the CP, as is the case with RLs. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Reliance on pre-GMA designations and regulations without public participation and new legislative action did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

For DRs adopted in 1991, after a later adoption of a CP the role of a GMHB is to determine whether such DRs are consistent with the CP. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

There is nothing in the GMA that requires or even allows CAs to be interim. *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94)

RL regulations and CA regulations are treated differently in the GMA. RL regulations have a certain expiration date at the time of adoption of DRs for the CP. No such expiration date is found in the CA DRs section. *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94)

CA DRs are independent of, and different than, CP implementing DRs and are reviewable after adoption even if a CP has not yet been adopted. RCW 36.70A.060(2). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

a. Wetlands

The use of a 35-foot buffer in Type 1 waters under SMP designations "suburban" and "urban" areas continue to substantially interfere with the goals of the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Buffer width requirements for Type 1 waters involving minor new development establishing a 150 foot width in "natural" areas, a 75 foot width in "conservancy" areas and a 50 foot width in "rural" areas removes substantial interference. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area to 20,000 square feet removed substantial interference as to minor new development in Type 2, 3, and 4 waters. However, the county's failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Under the record and BAS in this case the county complied with the Act by removing an inconsistency in definitional criteria for Type 1-5 waters. The county's choice not to adopt the new DNR definition of Type 3 waters found in WAC 242-16-030 was not an amendment to its CAO and was not clearly erroneous. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Under BAS established in this record a 25-foot buffer for Type 4 and 5 waters is "functionally ineffective." A buffer averaging provision allowing a fifty percent reduction to a 25-foot buffer for minor new development does not comply with the Act and substantially interferes with Goal 10 of the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The use of a program involving innovative techniques to establish proper CA buffering within agricultural zones appropriately balances Goals 6, 8, 9, and 10. *Mitchell v. Skagit County* 01-2-0004c (FDO 8-6-01)

Under a managed riparian buffer provision in agricultural RL the concept is compliant but the necessary performance standards recommended by the scientific advisory panel and adopted by the county continues to be noncompliant until completion of that action is made. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

The adequacy of a riparian buffer proposal is ultimately measured not by the characteristics of the buffer, but by the affect of that buffer on the fish habitat. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

In order to remove a previously imposed finding of invalidity the County must make a 50-foot buffer requirement applicable to all Type 5 streams. The County in this case has not sustained its burden of showing its action removed substantial interference with the goals of the Act. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

Under the BAS contained in this record a category B wetland buffer that was increased to 50 feet complied with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

Where a shoreline buffer reduction provision requires a geotechnical study to insure the setback would preclude the need for hard-armoring for the lifetime of the residence and which provides for native vegetation retention, the ordinance complies with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 10-12-00)

A requirement for "minimized vegetation removal" is not a DR standard that complies with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A provision that allows reduction of shoreline buffer areas through buffer averaging of existing residential setbacks, even with a requirement for a HMP, does not include BAS and does not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

A separate CA permit is not required by the GMA, but in order to comply with the GMA the ordinance must be clear that no adverse alteration to CAs or their buffers' functions and values can occur and that, if damaged, buffers must be allowed to rehabilitate to their pre-damaged purpose and function. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

The reduction of riparian habitat buffering recommendations without a scientific basis, nor with a reasoned analysis did not comply with the BAS requirement of the GMA. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

The exclusion of protection for class IV wetlands where no scientific data nor discussions of the reasons for the exclusion were included in the record, did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (CO 9-12-96)

Exempting all agricultural activities which could lead to destruction of Category I and II wetlands did not comply with the GMA. The elimination of buffer protection for class IV and V waters and a limited buffer for class II and III waters under the record in this case did not comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

A CA wetland ordinance does not require readoption at the time of the adoption of CP implementing DRs. Such regulations are only reviewable for consistency with the CP. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)

The change in language from the original "preclude inconsistent uses" to "protect" in 1992, allowed local governments a limited amount of discretion to exempt wetlands from regulation. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

The GMA does not require a county to treat various categories of urban wetlands the same as rural wetlands. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

Exemptions of wetlands from regulation under the GMA were in compliance, especially when other regulatory and nonregulatory provisions are considered. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

b. Frequently-Flooded Areas (FFAs)

In an area where dike failure is common, under the GMA a county has the duty to identify, inspect, monitor, and impose restrictions or conditions on the maintenance of existing dikes. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

A map which is an intricate part of a regulatory scheme to preclude new construction in certain FFAs must be adopted by formal action of the local government. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

A DR that precludes densities more intense than 1 du per 10 acres for ARLs within FFAs complies with the Act. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

Mason County failed to meet its burden of showing removal of substantial interference in its FFA ordinance. *Diehl v. Mason County* 95-2-0073 (CO 7-24-00)

An FFA designation must be clearly mapped and must include buffers sufficient to protect critical area functions and values. *Diehl v. Mason County* 95-2-0073 (CO 7-24-00)

Substantial interference with Goals 2, 8, and 10 were found where the local government failed to adopt permanent DRs to address risks of avulsion, together with the continued allowance of unmonitored diking activity, the continued allowance of an inappropriate level of construction in the floodway and the failure to include BAS. *Diehl v. Mason County* 95-2-0073 (CO 5-4-99)

Under this record, the county must include in its permanent DRs a program to monitor dike construction and improvements for possible effects on FFAs. *Diehl v. Mason County* 95-2-0073 (CO 5-4-99)

The record contained no evidence that anadramous fish were given *any* consideration in the development of the FFA DRs. *Diehl v. Mason County* 95-2-0073 (CO 5-4-99)

To comply with the GMA requirement to protect FFAs a local government must adopt permanent FFA DRs, preferably in one comprehensive ordinance rather than a plethora of amending ordinances. *Diehl v. Mason County* 95-2-0073 (CO 5-4-99)

Under the record in this case, inclusion of BAS meant that the FFA DRs must contemplate the likelihood of river avulsion. A moratorium prohibiting most development in the affected areas is only a

temporary measure. Permanent regulatory measures are necessary to fulfill the GMA requirement to protect FFAs. *Diehl v. Mason County* 95-2-0073 (CO 5-4-99)

The lack of a DR on minimum lot size and density requirements in FFAs did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 9-6-96)

Ordinances which merely regulated building requirements within a floodplain and did not address issues of whether and under what conditions building should occur in a floodplain did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

c. Geologically Hazardous Areas (GHAs)

Reduction of distance from a GHA location that required geological reports and assessments, was not in conformance with BAS and did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 7-13-01)

Petitioner did not prove that the DRs for GHA areas fail to comply with the Act even though such DRs could have been more clearly set forth. *FOSC v. Skagit County* 00-2-0048c (FDO 2-6-01)

A requirement for geotechnical assessment which does not include definitive standards in a DR against which the assessment can be measured does not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

The record demonstrated use of BAS in establishing flexibility in DRs for GHAs. *CCNRC v. Clark County* 96-2-0017 (CO 11-2-97)

d. Critical Aquifer Recharge Areas (CARAs)

The county must substantively apply the best available science in the record in adoption of its final Uniform Development Code as regards to seawater intrusion areas. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 9)

Under GMA, the county must protect its groundwater consistent with best available science. Further, per GMA Goal 10, the county has the overriding responsibility to protect its groundwater quality whether or not it has officially designated seawater intrusion areas as CARAs. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 16)

We are not persuaded by a county's argument that it has no authority to impose some form of water conservation measures, limiting the number of new wells allowed, or other measures to reduce the withdrawal of groundwater from individual wells if that withdrawal would disrupt the seawater/freshwater balance and lead to greater seawater intrusion. The exemption of RCW 90.44.050 does not limit a local jurisdiction from complying with its mandate for protection of groundwater quality and quantity under the GMA. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 16)

If the county wishes to adopt less-than precautionary protection standards and Best Management Practices, an adaptive management program must be developed and implemented that would ensure that monitoring of new and existing wells would continue and more strict protective action were planned for and ready to implement at once if the adopted strategies are not adequate. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 17)

Upon remand, the county must adopt regulations in its Uniform Development Code which are consistent with and fully implement the comprehensive plan goals and policies related to aquifer protection. *Olympic Environmental Council v. Jefferson County*, 01-2-0015 (FDO 1-10-02, p. 18)

The GMA does not require counties to adopt strategic plans for the protection of anadromous fish. However, since the county has not adopted a mandatory fallback approach to ensure the protection of critical areas and anadromous fish (in lieu of a compliant strategic plan), it remains in noncompliance. *Swinomish Indian Tribal Community v. Skagit County*, 02-2-0012c (FDO and CO 12-30-02, p. 30)

Only "critical" ARAs are required to be designated and protected. *ARD v. Shelton* 98-2-0005 (CO 6-17-99)

If BMPs are relied upon for protection of CAs some form of monitoring and enforcement must be included to ensure that the plans are actually implemented and followed. *ARD v. Shelton* 98-2-0005 (FDO 8-10-98)

A county's review of existing county, state, and federal regulations and adoption of DRs complied with the GMA under the clearly erroneous standard. *CCNRC v. Clark County* 96-2-0017 (CO 11-2-97)

A local government is required to adopt permanent regulations which address protection of CARAs. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

The lack of specific DRs or requirements to meet appropriate goals of a CAs ordinance did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

e. Fish and Wildlife Habitat Conservation Areas (FWHCAs)

FWHCAs buffers are below the ranges required by BAS under the record in this case. *Diehl v. Mason County* 95-2-0073 (CO 3-14-01)

Administrative discretion must be accompanied by clear guidelines, consultation with resource agencies and a public hearing for issues involving FWHCAs, under the record in this case. *Diehl v. Mason County* 95-2-0073 (CO 3-14-01)

Substantial interference with the goals of the Act is removed where buffer sizes are increased and HMPs are required prior to development in HCAs. *Diehl v. Mason County* 95-2-0073 (CO 12-1-00)

The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A local government's failure to include designation of species of local importance for FWHCAs does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

Where a County adopts appropriate criteria for designation of species and habitats of local importance the action complies with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

Where a DR allows "external riparian zone averaging" which would further degrade habitat areas based on existing residences, did not comply with the GMA especially in light of special emphasis for protection of anadromous fish set forth in RCW 36.70A.172. *CCNRC v. Clark County* 96-2-0017 (CO 11-2-97)

A standard 50-foot buffer for type IV and V waters, while at the low end of the range of scientific recommendations, achieved compliance because the buffers were within the range of BAS shown in this record. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

WAC 365-190-180(5) recommends a variety of protections in DRs according to specific species and habitats. A local government must follow those guidelines absent justification to the contrary. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

DECLARATORY RULING

A petition for declaratory ruling that is in essence a request for clarification of a previous determination of invalidity under RCW 36.70A.302(6), will be handled through that provision and the declaratory ruling request will be ignored. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)

A request for declaratory ruling that is in essence a request for clarification under RCW 36.70A.302(6) will be treated as a request for clarification and processed with an expedited hearing and a decision within 30 days of the hearing. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)

Where the question presented by a petition for declaratory ruling states that there is not, at the present time, a direct controversy involving a vigorous opposing view, a GMHB will decline to issue a ruling on the petition. *Woodland School District* 00-2-0026 (MO 7-19-00)

In order to qualify for a declaratory ruling the petitioner must show that the question involves an actual controversy. *Burlington, Petitioner* 97-2-0020 (FDO 7-29-97)

A declaratory ruling may not be used as a vehicle to allow advisory opinions that are prohibited by WAC 242-02-910(1)(b). *Burlington, Petitioner* 97-2-0020 (FDO 7-29-97)

Pursuant to WAC 242-02-920 a GMHB must identify "interested persons" at or subsequent to the notice of hearing. *Woodland, Petitioner* 95-2-0068 (FDO 7-31-95)

Where there is no issue for which it is appropriate to enter a declaratory order, under WAC 242-02-930 no ruling will be made. *Woodland, Petitioner* 95-2-0068 (FDO 7-31-95)

DEFAULT

The failure to participate in the prehearing conference or a motions hearing provides sufficient grounds for dismissal of the petition under WAC 242-02-710. *Chapman v. Clark County* 95-2-0051 (MO 5-11-95)

DEFERENCE

A county has wide discretion in determining which plant species and/or habitats have sufficient local importance to warrant designation and protection as species of local importance. *ICCGMC v. Island County* 98-2-0023c (CO 11-26-01)

A county's SEPA determination is entitled to deference and accorded substantial weight. In this case petitioners have sustained their burden under the clearly erroneous standard of proving that the county failed to comply with the Act regarding SEPA. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A GMHB does not have authority to select a greater deference to local government standard than the one set forth in RCW 36.70A.3201. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

The amendments to ESB 6094 in 1997 directed a more deferential standard of review for local government actions. *CCNRC v. Clark County* 96-2-0017 (CO 11-2-97)

The GMA provides that ultimate planning decisions rest with the local government. Such decisions are not unfettered but must be within the range of discretion allowed by the GMA. A GMHB does not substitute its judgement as to the best alternative available, but reviews the local government action to determine if it complies with the goals and requirements of the GMA. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

DEVELOPMENT REGULATIONS (DRS)

Where three ordinances are challenged by a PFR and subsequently the county rescinds all three ordinances, jurisdiction to continue the case is lost. Where there are no DRs in effect for which a finding of compliance or noncompliance could be made a board must dismiss the case. *ARD v. Mason County* 01-2-0017 (MO 10-12-01)

RCW 36.70A.470 prohibits the use of the "permitting process" for land use planning decisions. The stature requires the maintenance of an annual docketing list of proposed amendments to the CP or DRs. *Downey v. Ferndale* 01-2-0011 (FDO 8-17-01)

A map which is an intrical part of a regulatory scheme to preclude new construction in certain FFAs must be adopted by formal action of the local government. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

In an area where dike failure is common, under the GMA a county has the duty to identify, inspect, monitor, and impose restrictions or conditions on the maintenance of existing dikes. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

The use of RCW 36.70A.390 to adopt actions without a public hearing apply only to DRs and do not apply to CPs. Amendment of a CP through the use of this section does not comply with the Act. *Mudd v. San Juan County* 01-2-0006c (FDO 5-30-01)

A mere shifting of a DR to a new code section without any changes, does not establish jurisdiction to rule on the previously adopted ordinance. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A 1997 CP designation that was not appealed precludes GMHB jurisdiction when a later DR that is consistent with and implements the designation is adopted. *PRRVA v. Whatcom County* 00-2-0052 (FDO 4-6-01)

DRs which allow fifteen percent residential subdivision, RV parks, boat launches, etc., parks, golf courses, restaurants and commercial services all in designated RL areas do not comply with the Act and

substantially interferes with Goal 8 of the Act under recent Washington State Supreme Court cases. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A local government's duty with regard to initially adopted RLs is vastly different than that with regard to CAs. Under section .060(1) a local government must adopt DRs to assure conservation of RLs in the initial planning stages. Those DRs remain in effect until implementing DRs are adopted contemporaneous with or subsequent to a CP. RL designations and DRs must be adopted anew and therefore jurisdiction exists to review the local government's action even if the designations and DRs are unchanged. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A re-adoption of a previous CA ordinance that does not involve any changes after the consistency review does not invoke jurisdiction to review the substance of the original CA ordinance. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Critical area ordinances under RCW 36.70A.060(2) are not "interim" because a local government is not required to readopt such DRs but only to review them for consistency with the CP and implementing DRs under .060(3). *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The legislative scheme of the Act with regard to .040 and .130 requires that DR amendments go through the same annual review process as CP amendments. An "automatic" amendment to DRs upon approval of a specific permit application does not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Where a DR allows a number of uses in RLs, which fail to comply with recent State Supreme Court decisions such uses fail to comply with the GMA. Requiring a special use permit does not remedy this failure to comply. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Petitioner did not prove that the DRs for GHA areas fail to comply with the Act even though such DRs could have been more clearly set forth. *FOSC v. Skagit County* 00-2-0048c (FDO 2-6-01)

Adoption by a county of city DRs by reference to be applied within unincorporated UGAs complies with the Act except where the county fails to keep DRs current. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

Where the County's DR allowed significant uses in LAMIRDs which were not principally designed to serve the rural population under RCW 36.70A.070(5)(d)(i) and that did not protect the rural character of the area under RCW 36.70A.070(5)(c), substantial interference of the goals of the Act has not been removed. *Dawes v. Mason County* 96-2-0023 (CO 12-15-00)

A GMHB does not have jurisdiction to review portions of an ordinance previously adopted and not challenged within the proper time-frames where the ordinance was only amended in very limited sections, none of which were involved in the PFR submitted in this case. *Parsons v. Mason County* 00-2-0030 (MO 11-27-00)

A SAP that specifically references a memorandum of agreement between the City and WWU, which agreement directs and amends the adopted zoning code of the City and specifies the permit application and approval process for development projects on the WWU campus, is a DR under the definition contained in RCW 36.70A.030(7). *Servais v. Bellingham* 00-2-0020 (FDO 10-26-00)

The GMA definition of a DR by the Legislature does not include the concept of intent of the parties. *Servais v. Bellingham* 00-2-0020 (FDO 10-26-00)

The adoption of an amended DR denominated a memorandum of agreement, that occurred without any public participation except the noticing of the holding of a work session, does not comply with the GMA public participation goals and requirements. *Servais v Bellingham* 00-2-0020 (FDO 10-26-00)

A phased environmental review process under WAC 197-11-060(5)(b) for an amended DR that incorporated previous environmental documents, complied with the GMA. *Servais v. Bellingham* 00-2-0020 (FDO 10-26-00)

Where a shoreline buffer reduction provision requires a geotechnical study to insure the setback would preclude the need for hard-armoring for the lifetime of the residence and which provides for native vegetation retention, the ordinance complies with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 10-12-00)

A written agreement between the City and WWU defining the standards in adopting criteria for approval of building projects falls within the definition contained in RCW 36.70A.030(7) for a DR regardless of the intent of the parties to enter into the agreement to resolve a jurisdictional dispute. *Servais v. Bellingham* 00-2-0020 (MO 8-31-00)

Where a County adopts permanent DRs which are presumptively valid under RCW 36.70A.320, to implement a CP that was at the time also presumptively valid, compliance with the GMA requirement of permanent DRs was achieved. The issues of whether the DRs complied substantively complied with the Act would be resolved by separate hearing. *Panesko v. Lewis County* 98-2-0004 (CO 8-21-00)

The GMA requires a local government to adopt DRs that protect designated CAs. In discharging its duty to protect CAs a local government must include BAS and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

Adoption of an "interim" CAO is not authorized by the GMA and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

One dwelling unit per acre is not an ARL density that complies with the Act. It also substantially interferes with Goals 2, 8, 9 and 10. *Diehl v. Mason County* 95-2-0073 (CO 7-24-00)

A prior finding of invalidity regarding an IUGA ordinance is not rescinded automatically by adoption of a CP, under the provisions of RCW 36.70A.302(7)(a). A local government must enact an ordinance in response to the invalidity, obtain a compliance hearing and a ruling that the "plan or regulation as amended" no longer substantially interferes with the fulfillment of the goals of the Act. A determination of invalidity remains in effect until such time as a local government asks for and receives a finding from a GMHB that the new action no longer substantially interferes with the goals of the Act. *Smith v. Lewis County* 98-2-0011c (CO 7-13-00)

Ambiguous and nondirective CP policies that fail to encourage development in urban areas or reduce sprawl and maps that are generalized and in many cases inaccurate in the designation of UGAs, did not comply with the Act. A CP must include objectives, principles and standards that are directive. DRs are to be consistent with and implement the CP and may not be used as a mechanism to automatically amend the CP or render it meaningless. Under the record in this case petitioner's burden of showing substantial interference with the goals of the Act has been satisfied. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County CP must identify open space corridors within and between UGAs and encourage the retention of open space and recreational opportunities. A CP which contains no analysis of existing and future needs nor identification of locations of open spaces or open space corridors and no text regarding policies encouraging and retaining recreational and open space opportunities does not comply with the Act. It was not compliant with the Act for the County to circumvent the CP and merely adopt DRs to fulfill this requirement. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

In the designation of an FCC, the CP must determine if the requirements of RCW 36.70A.350 could be met in the foreseeable future. DRs are not the appropriate time to fulfill this requirement. DRs for an FCC must establish a system to ensure that an FCC urban designation is appropriately self-sufficient and contained. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

In order to be compliant with the Act the designation of an MPR under RCW 36.70A.360 must comply with the requirements of that section. There is no authority to apply a preliminary or provisional designation to an MPR until the requirements .360 are fulfilled. Under the record in this case there is no showing that the location is a setting of significant natural amenities. The failure to adhere to the requirements of the Act and purportedly apply a provisional designation to the MPR substantially interferes with Goals 1, 2 and 12 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The designation of an industrial land bank area under RCW 36.70A.367 must comply with the criteria contained therein and must contain analysis and designation in the CP and not through later adopted DRs. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Under the authority of *LaCenter v. New Castle Investments* 98 Wn. App. 224 (1999), impact fees are not and cannot be development regulations, are not a part of the requirements of RCW 36.70A and therefore not within the scope of jurisdiction provided in RCW 36.70A.280. *Achen v. Battleground* 99-2-0040 (FDO 5-16-00)

A requirement for geotechnical assessment which does not include definitive standards in a DR against which the assessment can be measured does not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A requirement for "minimized vegetation removal" is not a DR standard that complies with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

Where the subarea plan directs that a specific location is most suitable for light industrial growth, a DR that does not implement the subarea plan policy but rather allows unlimited commercial activity in the location, does not comply with the Act. Because of the small area delineated and the rapidly expanding nature of commercial development without any effective controls, substantial interference with Goals 5 and 11 are found. *Birchwood v. Whatcom County* 99-2-0033 (FDO 2-16-00)

The adoption of limited interim DRs at the time of CP adoption until a "full set" of DRs can be adopted, does not fully implement the CP and does not comply with the GMA. *Panesko v. Lewis County* 98-2-0004 (CO 11-16-99)

Clear regulations are essential for GMA compliance. Where multiple interpretations are shown or are possible, compliance has not been achieved. *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

There is both a requirement of internal consistency within a CP, WAC 365-195, and of consistency between DRs and the CP as defined in WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

The consistency required between DRs and the CP means that no feature of the plan or regulation is incompatible with any other feature of a plan or regulation. WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

Implementing DRs are distinct from consistency DRs. Implementing DRs are defined at WAC 365-195-800. There must not only be a lack of conflict but the regulations must be of sufficient scope to carry out fully the goals, policies, standards and directions contained in the CP. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

Where ordinances do not contain specific standards for deciding in advance whether a project does or does not qualify for approval under the policies of the CP, the implementing DRs do not comply with the GMA. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

A water ordinance may have some effect on the rate of development. Where the ordinance places no controls on development nor on land use activities it does not qualify as a DR under the definition contained in RCW 36.70A.030(7). *Rosewood v. Friday Harbor* 96-2-0020 (MO 12-6-96)

The policies set forth in a CP have the same directive affect as DRs. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

The definition of CP found in RCW 36.70A.030 involves a requirement that it be adopted pursuant to the GMA. The definition of DR has no such limitation. At a compliance hearing if no previous order of invalidity has been entered, a GMHB must consider whether such an order should then be imposed. Thus, a GMHB may impose invalidity on existing DRs regardless of whether they were adopted pursuant to GMA. *WEAN v. Island County* 95-2-0063 (CO 12-19-95)

Where no CP nor DR has been adopted and the deadlines established by the Legislature have passed, a GMHB has authority to invalidate portions of an existing zoning code adopted before the GMA became effective. *WEAN v. Island County* 95-2-0063 (CO 12-19-95)

A local government has the duty of enacting DRs that are understandable. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

An IUGA DR must expressly prohibit urban growth outside the IUGA boundaries. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

CA DRs need not apply to every conceivable wetland designation. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

There are two different types of DRs: CP "implementing" regulations and CA regulations. Each type is independent. CA DRs are reviewable immediately after adoption. *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

The adoption of CA DRs immediately grants jurisdiction for review of compliance with the GMA. If jurisdiction did not attach until completion of the CP or implementing DRs, review at that time would be limited to consistency under RCW 36.70A.060(3). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

DISCOVERY

A request for discovery will be denied where petitioners fail to demonstrate that the proposed discovery would lead to evidence that would be necessary or of substantial assistance in deciding the case. *Vines v. Jefferson County* 98-2-0018 (MO 1-21-99)

Under the record and the request for discovery in this case, allowance of discovery would make impossible fulfillment of the requirement of RCW 36.70A.300(1) to issue an order within 180 days. *Abenroth v. Skagit County* 97-2-0060 (MO 10-10-97)

DISCRETION OF LOCAL GOVERNMENT

A county has wide discretion in determining which plant species and/or habitats have sufficient local importance to warrant designation and protection as species of local importance. *ICCGMC v. Island County* 98-2-0023c (CO 11-26-01)

Where a 192 acre property meets some, but not all, of the CP criteria for designation of 1:20 and/or 1:10, a County is within its range of discretion to designate the entire property as 1:10 rural residential under the record in this case. *OEC v. Jefferson County* 00-2-0019 (CO 8-22-01)

The discretion allowed under RCW 36.70A.3201 is bounded by the requirement the discretion be exercised "consistent with requirements and goals of the" GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

'Available' means not only that the evidence must be contained in the record, but also that the science must be practically and economically feasible. 'Best' means that within the evidence contained in the record a local government must make choices based upon the scientific information presented to it. The wider the dispute of scientific evidence, the broader the range of discretion allowed to local governments. Ultimately, a local government must take into account the practical and economic application of the science to determine if it is the 'best available'. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

The provisions of BAS directing both preservation and enhancement of anadromous fish limits the discretion available to local governments and requires a more heavily weighted towards science decision. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

Under *HEAL v. GMHB*, 96 Wn. App. 522 (1999) a local government has the authority and obligation to take scientific evidence and balance it among the goals and requirements of the GMA. However, the case inaccurately refers to the burden on petitioners to prove a local government acted "arbitrarily or capriciously." The case also apparently holds that scientific evidence must play a major role in the context of critical areas. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

The discretion of a local government in designating and protecting CAs is limited by the requirements to: (1) ensure compliance with the GMA, (2) protect CAs, (3) ensure no net loss of CA functions, and (4) include BAS. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

It is not the role of a GMHB to "balance the equities" in deciding a case. The GMHB role is to determine compliance. If noncompliance is found, a GMHB remands the issue and is not authorized to direct a specific decision on the merits of the case. Local governments are afforded a "broad range of discretion" in determining a methodology for compliance. A petitioner must sustain the burden of showing that the action of the local government did not comply with GMA under the clearly erroneous standard of review. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

A county must appropriately balance the need to minimize and contain AMIRD boundaries with the desire to prevent abnormally irregular boundaries. The delineation of such boundaries does not require a concentric circle or a squared-off block. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

Under RCW 36.70A.3201 local governments have discretion to find ways to comply with the GMA and may use local conditions as a cornerstone of such compliance. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

RCW 36.70A.140 provides a local government with greater discretion to limit public participation "as appropriate and effective" in dealing with a response to a determination of invalidity. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

The establishment of a proper IUGA is not simply an accounting exercise. Cities and counties are afforded discretion under the GMA to make choices about accommodating growth. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Within the parameters of the goals and requirements of the GMA, local governments have wide discretion to make localized decisions. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

In exercising its discretion a local government must consider all aspects of public facilities and services and make a reasoned decision as to which are necessary and how to subject those facilities and services to concurrency requirements. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

A local government has the discretion to determine which public facilities and services are necessary to support development. In exercising its discretion a local government must consider all aspects of public facilities and services and make a reasoned decision as to which are necessary and how to subject those facilities and services to concurrency requirements. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

A local government has the discretion within the parameters of the GMA to determine proper phasing of concurrency. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

There is no discretion for local governments to allow new urban growth outside UGAs. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

A local government does not have the authority to change the definition of urban growth found in the GMA. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

A local government has the right to prioritize and emphasize the goals of the GMA. A local government does not have the right to disregard 12 of the goals and focus entirely on the property rights goal. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

GMA mandates early and continuous public participation in the planning process but grants local governments wide latitude in designing a public participation process based upon local conditions. *Beckstrom v. San Juan County* 95-2-0081 (FDO 1-3-96)

A local government has a wide range of discretion in determining specific designations within a properly established UGA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Under the GMA a GMHB does not have authority to specifically order a particular action to be taken by a local government. Therefore, the issue to be decided at a compliance hearing is whether the local government has complied with the GMA and not necessarily whether strict adherence to the FDO has been achieved. The specific mechanism for achieving compliance rests solely with a local government. *Port Townsend v. Jefferson County* 94-2-0006 (CO 12-14-94)

The concept of regionality and local government decision-making are fundamental to the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

RCW 36.70A.110 prohibits urban growth outside of a properly established IUGA and therefore a local government does not have any discretion to allow such urban growth. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95) *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

The GMA provides that ultimate planning decisions rest with the local government. Such decisions are not unfettered but must be within the range of discretion allowed by the GMA. A GMHB does not substitute its judgement as to the best alternative available, but reviews the local government action to determine if it complies with the goals and requirements of the GMA. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

DISCRIMINATION

The term "arbitrary and discriminatory actions" in Goal 6 involves the protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action. *PRRVA v. Whatcom County* 00-2-0052 (FDO 4-6-01)

DISPOSITIVE MOTIONS

Where several matters were not fully addressed in the cross-motions and exhibits for dispositive motions, the motions will be denied as to both parties and the matter will be addressed at the HOM. *ARD v. Mason County* 01-2-0025 (MO 12-31-01)

A PFR which challenges a CP amendment is not moot even if a concomitant rezone is granted by the City and is unchallenged by petitioners. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)

The GMA does not require notice to, or joinder of, an affected property owner as an indispensable party to GMHB cases. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)

Where three ordinances are challenged by a PFR and subsequently the county rescinds all three ordinances, jurisdiction to continue the case is lost. Where there are no DRs in effect for which a finding of compliance or noncompliance could be made a board must dismiss the case. *ARD v. Mason County* 01-2-0017 (MO 10-12-01)

Where a compliant SEPA process was fully set forth in the limited record accompanying a dispositive motion, the motion is granted. *Cooper Point v. Thurston County* 00-2-0003 (FDO 7-26-00)

The denial of a dispositive motion simply preserves the issue for the HOM. *Achen v. Battleground* 99-2-0040 (MO 2-17-00)

In reaching a decision on a dispositive motion a decision to grant or deny the motion involves examination of the size of the limited record in conjunction with the time available, the nature of the motion, the complexity of the issue and the reasonableness of claims. A dispositive motion will be denied if there is doubt. A denial of a dispositive motion means the issue will be decided at the HOM after a review of the entire record. *Evergreen v. Washougal* 99-2-0042 (MO 2-17-00)

When the parties' positions are unclear at the dispositive motion hearing, and recent appellate court cases call into question an earlier jurisdictional ruling by the GMHB, dispositive motions will be denied and the matters argued at the HOM. *Progress v. Vancouver* 99-2-0038 (MO 2-2-00)

Where the complexity of a case and its record does not lend itself to a decision based on less than a full hearing, a dispositive motion will be denied. *Birchwood v. Whatcom County* 98-2-0025 (MO 3-18-99)

A dispositive motion will be denied if there is doubt whether it should be granted. A denial of such motion simply means the issues will be decided after a review of the entire record and a complete hearing. *ICCGMC v. Island County* 98-2-0023 (MO 3-2-99)

A GMHB will reach its decision on a dispositive motion by reviewing an interrelated combination of criteria including the size of the limited record in conjunction with time availability, the nature of the motion, the complexity of the issue including whether it is one of first impression, and the reasonableness of the claims. *ICCGMC v. Island County* 98-2-0023 (MO 3-2-99)

It is appropriate to reserve decision on a dispositive motion where the limited record submitted raises as many questions as it answers. *WEAN v. Island County* 97-2-0064 (MO 2-23-98)

A case that involves complex issues and an extensive record, even though relating to the issue of jurisdiction, is not a proper vehicle for a dispositive motion ruling and judgment is reserved until the hearing on the merits. *Rosewood v. Friday Harbor* 96-2-0020 (MO 10-2-96)

Where the issues under consideration from a dispositive motion are complex and an extensive review of the record is required for determination, a ruling will ordinarily be reserved until the hearing on the merits. *Diehl v. Mason County* 95-2-0073 (Amended MO 10-10-95)

Where all issues can be decided on briefs, materials already submitted, and the arguments, a dispositive motion is the proper vehicle. *WEAN v. Island County* 95-2-0063 (MO 6-1-95)

Where the issues addressed by a dispositive motion are complex and require substantial review of the record, the motion will be denied. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)

Dispositive motions are more analogous to an appellate court motion on the merits than to a superior court summary judgment or failure to state a claim motions. *Reading v. Thurston County* 94-2-0019 (MO 12-22-94)

Except in rare instances where testimony is authorized under the standards of RCW 36.70A.290(4), a GMHB is not a fact-finding body and therefore affidavits submitted in support of a dispositive motion have little, if any, value. *Reading v. Thurston County* 94-2-0019 (MO 12-22-94)

In reaching a decision on a dispositive motion submitted under WAC 242-02-530(4), a decision whether to grant or deny the motion involves examination of the size of the limited record in conjunction with the time available, the nature of the motion, the complexity of the issue and the reasonableness of the claims. A dispositive motion will be denied if there is doubt. A denial of a dispositive motion means that the issue will be decided at the hearing on the merits after a review of the entire record. *Reading v. Thurston County* 94-2-0019 (MO 12-22-94)

DISSENTING OPINION

A finding of fact cannot be used to override repeal of the ordinance allowing continuation of the 1997 criteria. *FOSC v. Skagit County* 01-2-0002 (FDO 6-13-01)

The majority has incorrectly ruled regarding the Curtis LAMIRD designation. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Under the record in this case the County was clearly erroneous in adopting a uniform 5-acre density in the rural area and did not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 10-12-00)

The record demonstrated that surrounding parcelization was too great a consideration in RL designations. The remand order should include review of all of the areas disqualified because of such parcelization. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

Where the record demonstrated that the intent of the local government was to control development even though an ordinance was adopted to preserve water capacity, a sufficient nexus with the GMA and an official control was shown and therefore a GMHB has jurisdiction to review the action. *Rosewood v. Friday Harbor* 96-2-0020 (MO 12-6-96)

A GMHB should not invalidate sections of a zoning code that were not challenged by petitioner. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Under RCW 36.70A.280(2) a person is only required to appear. There is no requirement under the statute that a person participate. *Loomis v. Jefferson County* 95-2-0066 (MO 6-1-95)

The petitioner in this case has not shown APA standing under RCW 34.05.530 because inclusion within the IUGA was desired by petitioner and the remedy petitioner requested was beyond the scope of a GMHB. *Loomis v. Jefferson County* 95-2-0066 (MO 6-1-95)

The majority incorrectly applies the GMA to the record when it allows certain exemptions from regulation of rural wetlands. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

DUTIES

Under the GMA, a County has an affirmative duty to dispense as much accurate information to as many people as it possibly can. Simply providing access does not satisfy that duty. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

In an area where dike failure is common, under the GMA a county has the duty to identify, inspect, monitor, and impose restrictions or conditions on the maintenance of existing dikes. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

The rural character requirements of RCW 36.70A.070(5)(b) and (c) as well as RCW 36.70A.030(14) involve more than just preservation of "natural" rural area. A county must assure that the "natural landscape" predominates, but also has a duty to foster "traditional rural lifestyles, rural based economies and opportunities" to live and work in the rural area. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A county has the duty to reduce the inappropriate conversion of *undeveloped* land (whether existing or allowable after GMA planning) into low-density development. RCW 36.70A.020(2) and .070(5)(c)(iii). *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The public participation goals and requirements of the GMA impose a duty on a local government to provide effective notice and early and continuous public participation. Under the record in this case that duty was not discharged. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

ECONOMIC DEVELOPMENT ELEMENT

The designation of an industrial land bank area under RCW 36.70A.367 must comply with the criteria contained therein and must contain analysis and designation in the CP and not through later adopted DRs. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Application by a county of the criteria found in RCW 36.70A.070(5) in dealing with existing industrial uses that recognizes and protects the economic viability of such uses while restricting their location to appropriate areas, complies with the GMA. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

An ordinance which was designed to implement the goals and objectives of an economic development plan as an element of the CP, but which did not specify any locations of proposed commercial or limited industrial districts, did not comply with the requirement found in RCW 36.70A.040(3)(d) requiring consistency between the plan and DRs. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

EMERGENCY

An ordinance adopted pursuant to RCW 36.70A.390 without a public hearing, and that expired prior to the date of the HOM, divests the Board of jurisdiction to rule on the issue of compliance of the ordinance. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

A DR adopted as an "emergency" without a public hearing makes it very difficult to show compliance with the Act. Under this record, hearings were held within sixty days but no permanent ordinance was adopted. The actions do not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The emergency provisions allowing waiver of SEPA compliance did not apply to "citizen confusion over property rights" after a determination of invalidity under WAC 197-11-880. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

ESSENTIAL PUBLIC FACILITIES (EPFS)

A residential zone within airport property does not comply with RCW 36.70A.200(5). *CCARE v. Anacortes* 01-2-0019 (FDO 12-12-01)

A local government may not preclude the siting of EPFs. Siting includes use or expansion of airport facilities for airport uses. *CCARE v. Anacortes* 01-2-0019 (FDO 12-12-01) & *Desmoines v. CPSGMHB* 98 Wn. App. 23 (1999)

An airport is an EPF under the definition found in RCW 36.70A.200. *CCARE v. Anacortes* 01-2-0019 (FDO 12-12-01)

Where a city adopted its CP before a county has adopted a process for siting EPFs and the CP included criteria for location of future EPFs along with a recognition of the necessity to have the city and county develop future siting criteria, compliance with the GMA was achieved. *Eldridge v. Port Townsend* 96-2-0029 (FDO 2-5-97)

The requirement for establishing a process for siting EPFs was not satisfied by developing a study to determine if other studies should occur. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

An airport is an EPF under the definition of RCW 36.70A.200(1). *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

RCW 36.70A.200(2) states that a local government may not preclude the siting of EPFs. That requirement directs that DRs must be adopted that restrict incompatible uses surrounding current or future locations of EPFs. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

EVIDENCE – *SEE* SUPPLEMENTAL EVIDENCE

EXHAUSTION

The exhaustion of administrative remedies requirement found in RCW 43.21C.070(2) and WAC 197-11-608(3)(c) for SEPA review is specifically directed to actions taken in order to qualify for *judicial review* and does not apply to GMHB review under RCW 36.70A.280(1). *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)

Filing a motion for reconsideration of a FDO is not necessary to obtain judicial review. RCW 34.05.470(5). *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)

There is no exhaustion of administrative remedies requirement in the GMA. *CPRA v. Clallam County* 95-2-0083 (MO 1-17-96)

Under RCW 36.70A.110(2), where a city previously objected to an IUGA to CTED, it was not necessary for the city to once again object when a CP UGA with identical boundaries was adopted. *CPRA v. Clallam County* 95-2-0083 (MO 1-17-96)

EXHIBITS

As a general proposition requested supplemental evidence compiled after the decision of the local government has been made will not be permitted. Such supplemental evidence may occasionally be admitted for issues involving a request for invalidity. Supplemental evidence of materials available to the local government, often developed by the local government, but not included in the record of deliberations are often admitted. Newspaper articles are not admitted for supplemental evidence. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)

Since a GMHB can take official notice of growth management guidelines issued by CTED as well as the RCW and WAC provisions, there is no need to add proposed exhibits setting those items out. *Smith v. Lewis County* 98-2-0011 (MO 12-22-98)

EXISTING USES

A local government must regulate preexisting uses in order to fulfill its duty to protect critical areas. GMA requires any exemption for preexisting use to be limited and carefully crafted. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

While existing zoning cannot be used as the sole criterion for designation of areas of AMIRDs, it may be used as an exclusionary criterion. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

The definition of CP found in RCW 36.70A.030 involves a requirement that it be adopted pursuant to the GMA. The definition of DR has no such limitation. At a compliance hearing if no previous order of invalidity has been entered a GMHB must consider whether such an order should then be imposed. Thus, a GMHB may impose invalidity on existing DRs regardless of whether they were adopted pursuant to GMA. *WEAN v. Island County* 95-2-0063 (CO 12-19-95)

EXTENSIONS

A motion for reconsideration may not be filed after an order granting extension of time. That order does not qualify as a final decision under WAC 242-02-832(1). *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)

Where the parties have previously stipulated to an extension of time for issuance of a FDO and as part of that extension order a date was fixed for the time of issuance of a new request for extension and no such request was made the case is dismissed. *Carlson v. San Juan County* 99-2-0008 (MO 2-29-00)

Under RCW 36.70A.300(2)(b), if the parties so stipulate and a GMHB finds that potential settlement of all or some of the issues in a case could resolve significant issues in dispute, an extension of the 180-day limitation for issuing a ruling is appropriate. *Abenroth v. Skagit County* 97-2-0060 (MO 10-30-97)

FAILURE TO ACT

Where noncompliance was based on a failure to act, a compliance hearing for a new ordinance involved facial good-faith evidence in the limited record which, when combined with the presumption of validity

under RCW 36.70A.320, resulted in a compliance finding and a requirement for a PFR to challenge the new ordinance. *Panesko v. Lewis County* 98-2-0004 (MO 6-12-98)

In a hearing to rescind or modify invalidity, where a previous inaction in adopting DRs for CAs had been cured by adoption of a new ordinance, only a facial review of the new ordinance was made and the question of compliance with the GMA would only be addressed upon filing of a PFR. *Seaview v. Pacific County* 95-2-0076 (MO 5-28-97)

An adoption of a CP where a prior noncompliance finding was based upon a failure to act to adopt such plan, complied with the GMA. Further challenges were required to be made through a PFR. *Diehl v. Mason County* 95-2-0073 (CO 9-6-96)

A prior finding of noncompliance for failure to adopt implementing DRs is cured when such regulations are adopted. Review of those regulations is by a PFR not by a compliance hearing. *Diehl v. Mason County* 95-2-0073 (CO 9-6-96)

Where a previous order found a county had failed to act to adopt IUGAs and a subsequent DR cured that deficiency, compliance with the GMA has to be addressed through a PFR. *Diehl v. Mason County* 95-2-0073 (CO 2-22-96)

The failure to adopt DRs to preclude new urban residential, commercial and/or industrial growth and extension of urban governmental services outside IUGAs did not comply with the GMA. A local government does not have authority to wait until adoption of its CP to take such action. *FOSC v. Skagit County* 95-2-0065 (CO 2-7-96)

FISH AND WILDLIFE HABITAT CONSERVATION AREAS – *SEE* CAS

FORESTRY – *SEE* NATURAL RESOURCE LANDS

FRAMEWORK

CPPs may not conflict with GMA goals. Amending a CPP may not be used as justification for failure to comply with the Act. Where a framework analysis is provided and establishes the procedure to amend a county CPP's, the procedure must be followed in order to comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

FREQUENTLY FLOODED AREAS – *SEE* CAS

FULLY CONTAINED COMMUNITIES (FCCS)

A county is compliant when its approval process for an FCC includes the statutory criteria of RCW 36.70A.350 and a process for review, approval, and designation of the FCC. *Mudge, Panesko, Zieske, et*

al. v. Lewis County, 01-2-0010c (CO 7-10-02) Also *Panesko v. Lewis County*, 00-2-0031c, *Butler v. Lewis County*, 99-2-0027c, and *Smith v. Lewis County*, 98-2-0011c (CO 7-10-02)

In the designation of an FCC, the CP must determine if the requirements of RCW 36.70A.350 could be met in the foreseeable future. DRs are not the appropriate time to fulfill this requirement. DRs for an FCC must establish a system to ensure that an FCC urban designation is appropriately self-sufficient and contained. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

There is no authority in the GMA to apply a provisional or preliminary FCC designation. With no adherence to RCW 36.70A.350 in the CP and a purported provisional vesting designation, the designation substantially interferes with Goals 1, 2 and 12 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

GEOLOGICALLY HAZARDOUS AREAS – *SEE* CAS

GOALS

Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Under the record in this case, the County appropriately considered property rights under Goal 6. *Mitchell v. Skagit County* 01-2-0004c (FDO 6-8-01)

A claim of petitioners who were owners of improved property that the allowance of RVs on unimproved properties interfered with Goal 6 was not the type of "property right" intended by the Legislature to be encompassed by Goal 6. *PRRVA v. Whatcom County* 00-2-0052 (FDO 4-6-01)

The term "arbitrary and discriminatory actions" in Goal 6 involves the protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action. *PRRVA v. Whatcom County* 00-2-0052 (FDO 4-6-01)

A DR which allows any nonconforming use to convert to a different nonconforming use within the rural areas of the county does not comply with the Act and substantially interferes with Goals 1, 2, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Allowance of the same kinds of uses as those allowed in LAMIRDs for all other rural areas denominated as "rural development districts" does not comply with the Act and substantially interferes with Goals 1, 2, 10, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

DRs which substantially intensify the uses allowed in a LAMIRD beyond those in existence on July 1, 1993, for Lewis County do not comply with the Act and substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl. Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A variety of rural densities required under .070(5) are not met by conclusionary undocumented statements regarding the effect of CAs. A uniform 1:5 density does not meet the requirements for reducing low-density sprawl, maintaining rural character, assuring visual compatibility, and containing rural development. Such a uniform density allows incompatible uses adjacent to RLs and reduced protection of CAs. Such action substantially interferes with Goals 1, 2, 8, and 10. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

DRs which allow fifteen percent residential subdivision, RV parks, boat launches, etc., parks, golf courses, restaurants and commercial services all in designated RL areas do not comply with the Act and substantially interferes with Goal 8 of the Act under recent Washington State Supreme Court cases. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Under the record in this case, the county improperly included vast areas of undeveloped property in its LAMIRD designations. Such areas are noncompliant and further substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Goal 1 of the Act allows and encourages expansion to take place in urban areas where public facilities can accommodate such growth at a lower cost and with less burden to taxpayers and to the natural environment. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Goal 12 of the GMA requires local governments to ensure that public facilities and services be adequate to serve the development at the time that it is available for occupancy, but does not require adequacy for densities beyond those existing at the time of availability so long as planning has been carried out that will ensure adequate public facilities and services for future denser occupancy. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

Under the record in this case, the commercial/industrial needs analysis and shift of urban commercial/industrial allocation to non-urban areas substantially interferes with Goals 1 and 2 of the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

CPPs may not conflict with GMA goals. Amending a CPP may not be used as justification for failure to comply with the Act. Where a framework analysis is provided and establishes the procedure to amend a county CPP's, the procedure must be followed in order to comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)

A one-acre property virtually filled with a community center building with no further opportunity for development and substantial interference with Goal 8 of the Act will result in a rescission of invalidity. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

A petitioner's concern about a local government's hearing examiner system and the reluctance to incur the expense of a court appeal was beyond the scope of review authorized to a GMHB by the Legislature and did not constitute a violation of Goal 6. *Evaline v. Lewis County* 00-2-0007 (FDO 7-20-00)

Balancing of GMA goals can take place only after goals are met through compliance. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

A local government has the right to prioritize and emphasize the goals of the GMA. A local government does not have the right to disregard 12 of the goals and focus entirely on the property rights goal. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

The goals of the GMA have substantive authority and must be considered and incorporated into all GMA actions. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

GMA PLANNING

Under the GMA, a County has an affirmative duty to dispense as much accurate information to as many people as it possibly can. Simply providing access does not satisfy that duty. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

A county has the duty to reduce the inappropriate conversion of *undeveloped* land (whether existing or allowable after GMA planning) into low-density development. RCW 36.70A.020(2) and .070(5)(c)(iii). *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

HABITAT MANAGEMENT PLAN

Substantial interference with the goals of the Act is removed where buffer sizes are increased and HMPs are required prior to development in HCAs. *Diehl v. Mason County* 95-2-0073 (CO 12-1-00)

IMPACT FEES

Under the authority of *LaCenter v. New Castle Investments* 98 Wn. App. 224 (1999), impact fees are not and cannot be development regulations, are not a part of the requirements of RCW 36.70A and therefore not within the scope of jurisdiction provided in RCW 36.70A.280. *Achen v. Battleground* 99-2-0040 (FDO 5-16-00)

A transportation impact fee ordinance which could have some effect on the rate of development but placed no "controls" on development or land use activities does not meet the definition of a DR under RCW 36.70A.030(8). Therefore, a GMHB does not have jurisdiction to review an appeal of that ordinance. *Properties Four v. Olympia* 95-2-0069 (FDO 8-22-95)

INCORPORATION BY REFERENCE

Adoption by a county of city DRs by reference to be applied within unincorporated UGAs complies with the Act except where the county fails to keep DRs current. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

Under RCW 36.70A.060(1) a County is required to readopt its RL designations and DRs in permanent form at the time of adoption of its CP. Jurisdiction thereafter exists for a GMHB to review both the RL designations and DRs in the CP even if adopted by reference, upon filing a proper PFR. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

GMA compliance is not achieved where a city CFE which was still in process was adopted by reference by a county for claimed compliance with RCW 36.70A.070(3). *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

RCW 36.70A.070(3)(d) requires that a CFE clearly identify funding sources. A generalized list of funding sources did not comply with such a requirement. However, use of other sections of the CP which are incorporated by reference and are sufficiently specific documents does comply with the GMA. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

Pre-existing zoning code provisions adopted by reference without a clear statement of how they support conservation of RLs were shown to be internally inconsistent, and thus could not be consistent with the GMA or CPPs. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

The adoption of a groundwater management plan into the FSEIS as authorized by WAC 197-11-640 sufficiently disclosed potential environmental impacts from increased agricultural use. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The incorporation of a different entity's plan for capital facilities without review to ensure consistency to achieve the goals and requirements of the GMA does not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

INDISPENSABLE PARTY

The GMA does not require notice to, or joinder of, an affected property owner as an indispensable party to GMHB cases. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)

INDUSTRIAL LAND BANKS/INDUSTRIAL DEVELOPMENT

An ILB first brought forth at a Planning Commission sub-committee meeting and included for the first time in a Planning Commission draft less than a month before final CP adoption by the BOCC did not comply with the public participation goals and requirements of the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The designation of an industrial land bank area under RCW 36.70A.367 must comply with the criteria contained therein and must contain analysis and designation in the CP and not through later adopted DRs. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The inclusion of 263 acres of ARL within an ILB designation substantially interfered with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A purported ILB "reserve area" was without authority and did not comply with the GMA. The Legislature required only two sites to be designated ILB under RCW 36.70A.367. Additional designations substantially interfered with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

INFRASTRUCTURE

The provisions of RCW 36.70A.070(6)(b) and RCW 36.70A.020(12) establish the concurrency requirement of the Act. Under the record in this case, San Juan County complied with the Act because water and sewage hookups must be "in place" at the time "development occurs," despite acknowledged work to be done on appropriate LOS levels for UGAs and LAMIRDs. *Mudd v. San Juan County* 01-2-0006c (FDO 5-30-01)

The fact that water and sewer facilities are provided by non-county serving agencies does not relieve the county of including the budgets and/or plans in its analysis of the proper location of an UGA. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such needs for infrastructure does not comply with the GMA, nor did the county properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

Goal 12 of the GMA requires local governments to ensure that public facilities and services be adequate to serve the development at the time that it is available for occupancy, but does not require adequacy for densities beyond those existing at the time of availability so long as planning has been carried out that will ensure adequate public facilities and services for future denser occupancy. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Within municipal UGAs efficient phasing of infrastructure is the key element, not the interim shape of the city limits boundary. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

INNOVATIVE TECHNIQUES

The use of a program involving innovative techniques to establish proper CA buffering within agricultural zones appropriately balances Goals 6, 8, 9, and 10. *Mitchell v. Skagit County* 01-2-0004c (FDO 8-6-01)

INTERIM

An ordinance adopted pursuant to RCW 36.70A.390 without a public hearing, and that expired prior to the date of the HOM, divests the Board of jurisdiction to rule on the issue of compliance of the ordinance. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

The use of RCW 36.70A.390 to adopt actions without a public hearing apply only to DRs and do not apply to CPs. Amendment of a CP through the use of this section does not comply with the Act. *Mudd v. San Juan County* 01-2-0006c (FDO 5-30-01)

The use of the term "interim" in a designation of UGA process where a county acknowledged that the designations were a "work in progress" did not relieve the county of the duty to comply with all the goals and requirements concerning UGAs before compliance with the GMA can be achieved. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The adoption of an interim ordinance to amend a previously invalidated matrix of permitted uses to allow fire stations and accessory structures removes substantial interference as to that use only. A compliance hearing is necessary before a decision on compliance may be reached. *Diehl v. Mason County* 96-2-0023c (MO 4-18-01)

Critical area ordinances under RCW 36.70A.060(2) are not "interim" because a local government is not required to readopt such DRs but only to review them for consistency with the CP and implementing DRs under .060(3). *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Adoption of an "interim" CAO is not authorized by the GMA and does not comply with the Act. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

Under RCW 36.70A.060(1) a County is required to readopt its RL designations and DRs in permanent form at the time of adoption of its CP. Jurisdiction thereafter exists for a GMHB to review both the RL designations and DRs in the CP even if adopted by reference, upon filing a proper PFR. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Under RCW 36.70A.130(1) every CP is subject to continuing review and evaluation. Where a CP has been adopted, is being used and has no sunset date, it is considered permanent under the GMA even though the CP referred to specific area as "interim" to be revisited after a study was completed. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

Under recent amendments to RCW 36.70A.302(7)(a) a local government may either amend an invalid plan or regulation or subject such plan or regulation to interim controls. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)

INTERIM URBAN GROWTH AREAS (IUGAS)

When an IUGA ordinance dealing with restrictions on rural growth is superceded by an adopted CP, the issues in the case are not moot although they may well be addressed in a corresponding FDO in the CP process. Continued noncompliance and invalidity was found. *Smith v. Lewis County* 98-2-0011c (CO 7-13-00)

A prior finding of invalidity regarding an IUGA ordinance is not rescinded automatically by adoption of a CP, under the provisions of RCW 36.70A.302(7)(a). A local government must enact an ordinance in response to the invalidity, obtain a compliance hearing and a ruling that the "plan or regulation as amended" no longer substantially interferes with the fulfillment of the goals of the Act. A determination of invalidity remains in effect until such time as a local government asks for and receives a finding from a GMHB that the new action no longer substantially interferes with the goals of the Act. *Smith v. Lewis County* 98-2-0011c (CO 7-13-00)

Under this record, prohibition of residential development is an essential element of the industrial IUGA, as are restrictions of use to resource-based or rail-dependent industry and associated and supportive commercial development. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

An affordable housing element is not a requirement of the GMA at the time of establishing IUGAs. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

Transportation concurrency and LOS standards are tasks for the CP process and are not required in the designation of IUGAs. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

The GMA does not envision the creation of new small towns in rural areas at the IUGA stage of planning. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

Nothing in the GMA prevents a county from approving an IUGA adjacent to lands with urban characteristics solely because land within the IUGA is being farmed. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

Under RCW 36.70A.110 a local government must permit a range of urban densities and uses including affordable housing requirements. Nothing in RCW 36.70A.110(5) makes that requirement different for an IUGA. *Smith v. Lewis County* 98-2-0011 (MO 12-11-98)

Because of regionality within the counties and cities of the WWGMHB jurisdiction, it is impossible to establish a standard average density per acre or other mathematical baseline to determine compliance with the GMA in the sizing or location of IUGAs. The establishment of a proper IUGA is not simply an accounting exercise. Cities and counties are afforded discretion under the GMA to make choices about accommodating growth. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

CPPs play a major role in determining proper IUGAs. CPPs must comply with the GMA and cannot be used as a justification for failure of an IUGA to comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The purpose of IUGAs is to establish IUGAs at municipal boundaries and minimize or eliminate expansion until a proper land capacity analysis, including existing and future capital facilities impacts and existing and future fiscal impacts, has taken place. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The GMA requirement for an IUGA land capacity analysis does not shift the burden of proof to a local government but simply provides an analytic framework to determine whether to expand IUGAs beyond municipal boundaries. The burden of showing the framework was not used or that it was used in a way that did not comply with the GMA remains with a petitioner. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

A county is required to account for growth that has occurred between the base year and the year in which an IUGA was adopted. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

A recognition of growth that has already taken place helps to prevent over-sizing of IUGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The county must size an IUGA large enough to accommodate the growth that will be directed into it. The Legislature has determined that directing growth to urban areas provides for better use of RLs and more efficient use of taxpayer dollars. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The GMA requires local governments to adopt policies, DRs and innovative techniques to prohibit urban growth outside of properly established IUGAs and UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The more a local government uses techniques to funnel growth into urban areas, the more discretion is afforded under the GMA in the sizing of IUGAs or UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Under RCW 36.70A.110 the establishment of an IUGA depends on the demand, as established from OFM population projections, the current supply of land and the cost of supplying public facilities (infrastructure) and services. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

A demand factor analysis for projected industrial land did not comply with the GMA where it was based upon erroneous population projection assumptions, failed to reconcile the differences in projected demand between various exhibits, and was based upon historical zoning patterns. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Where the record demonstrated an industrial land supply in excess of 13,000 acres, which was at least 450% greater than forecasted demand, IUGAs based upon such an analysis did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

A local government must examine and consider locating urban growth first in areas characterized by existing growth with existing public facilities and services. Only after such examination and consideration should a local government then examine the second area of characterization by urban growth to be later served adequately by existing public facilities and services and any additional needed public facilities and services. Only after exhaustive consideration of the first two locations should a local government place urban growth in the remaining portions of IUGAs or UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Where the record is devoid of information or analysis as to the cost of extension of public facilities and services for industrial zoned IUGAs in unincorporated areas, there was no compliance with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Where a new IUGA designation was made without even a threshold determination required by WAC 197-11-310, compliance with the GMA was not achieved. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The lack of information or analysis of available supply of commercial land within IUGAs was fatal to GMA compliance. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The lack of any cost analysis for future public facilities and services dealing with commercial IUGA designations rendered the designation not in compliance with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The GMA signals the end of land use planning solely for revenue purposes and tax-base issues. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Residential IUGAs that included too much area and areas that were inappropriate for IUGA designation and which included no provisions for infilling did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The failure of a county to complete RL and CA designations and DRs prior to IUGA designations, when such resource and CA lands were included in the IUGA, did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Projected densities in IUGAs or UGAs at the end of the planning period, which only slightly increased current densities, did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The GMA does not allow designation of areas for urban growth where no such urban growth is expected within the planning period. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

A DR which did not limit industrial development to resource-based industry nor limit commercial development to rural neighborhood needs in areas outside properly established IUGAs did not comply with the GMA. *FOSC v. Skagit County* 95-2-0065 (CO 8-28-96)

One of the major purposes of an IUGA ordinance is to preclude new urban development outside of IUGAs while local governments complete their GMA CPs and implementing regulations. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

The GMA does not preclude the placement of resource-based industries or rural commercial development outside of IUGAs. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

Nonresidential uses outside IUGAs must, by their very nature, be dependent upon being in a rural area and must be compatible both functionally and visually with the rural area. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

Allowance of new urban growth outside the IUGA boundary does not comply with the GMA. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Under the record in this case, the allowance of densities of 1 dwelling unit per 2 acres and greater densities in areas outside properly established IUGAs substantially interferes with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

The purpose of DRs to prohibit urban growth outside IUGAs is to contain sprawl immediately. Greater discretion to balance competing interests comes with the adoption of a CP. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Where a previous order found a county had failed to act to adopt IUGAs and a subsequent DR cured that deficiency, compliance with the GMA has to be addressed through a PFR. *Diehl v. Mason County* 95-2-0073 (CO 2-22-96)

Where an ordinance had a sunset date that expired, leaving no DRs implementing the IUGA, a local government failed to comply with RCW 36.70A.110. *Diehl v. Mason County* 95-2-0073 (Amended MO 10-10-95)

Where an interlocal agreement between a city and a county established an IUGA at the city limits but provided that there was no restriction to annexation outside the IUGA, a clear violation was shown. *Diehl v. Mason County* 95-2-0073 (Amended MO 10-10-95)

The GMA requires that new urban growth be served by urban public facilities and services whether they are provided by a public or private source. Public services and facilities means that all such services must be equitably available to all persons within an IUGA. *Loomis v. Jefferson County* 95-2-0066 (FDO 9-6-95)

In order to qualify as an unincorporated IUGA an area must be characterized by urban growth or adjacent to areas characterized by urban growth. *Loomis v. Jefferson County* 95-2-0066 (FDO 9-6-95)

Where no evidence showed the basis for a population allocation of a nonincorporated IUGA nor showed that the assigned OFM population projection could not be accommodated within existing municipal limits nor showed that an agreement under the county's CPP provisions had been reached, the IUGA designation did not comply with the GMA. *Loomis v. Jefferson County* 95-2-0066 (FDO 9-6-95)

Prior to adoption of any IUGA beyond city limits a proper planning analysis of growth needs and the present and future availability of adequate public facilities and services to meet those needs as well as planning for the costs of providing such public facilities and services is required. *Loomis v. Jefferson County* 95-2-0066 (FDO 9-6-95)

The failure to provide for an adequate water supply for urban densities showed that the establishment of an IUGA did not comply with the GMA. *Loomis v. Jefferson County* 95-2-0066 (FDO 9-6-95)

An IUGA DR must expressly prohibit urban growth outside the IUGA boundaries. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

An IUGA is initially established at the municipal boundary. Until a proper land capacity analysis, which includes a capital facilities and fiscal impact analysis, is completed the IUGA cannot be moved. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

Greenbelts and open spaces must be identified within an IUGA. The most common method of such identification is by mapping. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

A population projection that was shown to be less accurate than the one provided by OFM did not comply with the GMA and could not be used as the basis for drawing IUGAs. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

A land capacity analysis is a necessary prerequisite to establishing IUGAs. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

The GMA does not allow existing zoning to be the sole criterion upon which to base an IUGA. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

RCW 36.70A.110(4) was passed by the Legislature to prevent new urban development from occurring outside a logically established IUGA until the CP is completed. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

RCW 36.70A.110(1) requires that municipal boundaries are to be included within an IUGA and the balance of the GMA establishes that those boundaries may not be extended until a proper analysis has been adopted. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

In establishing an IUGA where a county used appropriate analysis and reasoning and conclusions that were within the range of discretion afforded by the GMA, that decision complied with the GMA. *Mahr v. Thurston County* 94-2-0007 (FDO 11-30-94)

An IUGA must initially be established at the municipal boundaries and expanded only when appropriate information and analysis balanced with CPPs and the goals and requirements of the GMA are met. *Williams v. Whatcom County* 94-2-0013 (FDO 10-13-94)

Under RCW 36.70A.110 the decision to establish a particular IUGA is made by the County. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)

An IUGA is definitionally established at the municipal boundary and may be expanded only after a proper analysis of the need for, cost of and ability to pay for additional urban growth. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

A reasonable analysis of current data is necessary prior to the establishment of an IUGA outside municipal boundaries. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

CPPs apply to and must be consistent with the establishment of an IUGA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

A land capacity analysis, an analysis of existing and future capital facilities and services, and necessary fiscal impacts must be completed before an IUGA outside municipal boundaries may be established. The IUGA must be consistent with the goals and requirements of the GMA and the CPPs. Guidance as to the information required for such an analysis is found in WAC 365-195-335(3). *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

The purpose of an IUGA is to immediately establish a boundary until completion of the CP and DRs. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

New urban growth is prohibited outside of a properly established IUGA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

The GMA sequence requirements of designation and conservation of RLs, designation and protection of CAs, adoption of CPPs, establishment of interim UGAs and adoption of a CP and DRs are not mandatory, but it would be extremely difficult for a local government to comply with the GMA if a different sequence of actions was used. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

RCW 36.70A.110 prohibits urban growth outside of a properly established IUGA and therefore a local government does not have any discretion to allow such urban growth. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95) *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

INTERLOCAL AGREEMENTS (ILAS)

Where a county adopts a position that for many years that interlocal agreements adequately substituted for DRs to accomplish the purpose of transformance of governance, it cannot now complain that it does not have the ability to amend those interlocal agreements in order to achieve compliance. *FOSC v. Skagit County* 00-2-0050c (RO 3-5-01)

Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

The adoption of an amended DR denominated a memorandum of agreement, that occurred without any public participation except the noticing of the holding of a work session, does not comply with the GMA public participation goals and requirements. *Servais v Bellingham* 00-2-0020 (FDO 10-26-00)

ILAs between cities and counties ensuring that growth and development of commercial and industrial uses are timed, phased and efficiently provided with services must be in place and in force before compliance with the GMA can be found. *Abenroth v. Skagit County* 97-2-0060 (FDO 9-23-98)

An interlocal agreement between the city and county that is enforced to require concurrency and preclude uncoordinated strip commercial growth along a major highway complies with the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

In the absence of an interlocal agreement giving the city control over land use policies and DRs, no additional protection for CAs in the proposed UGA was available. The record did not reveal why the county was unable to protect the watershed if it had not been designated for urban growth. *Wells v. Whatcom County* 97-2-0030 (FDO 1-16-98)

The GMA does not allow designation of an UGA that is not expected to ever develop at urban densities simply to allow a city to have greater control over its water supply, particularly when the county would continue to exercise planning jurisdiction over the area and no interlocal agreement had been made. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

INTERVENTION

Intervention is granted subject to the conditions that no new issues may be raised, adherence to the prehearing order is required and any mediation or settlement will involve intervenors, but intervenors may not object or otherwise interfere with any resolution between the county and individual petitioners. *Durland v. San Juan County* 00-2-0062c (MO 1-23-01)

Under RCW 36.70A.290(7) the test for granting or denying intervention is directed by RCW 34.05.443. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)

The provisions of RCW 36.70A.330(2) do not provide for intervention standing during a compliance hearing. Intervention is governed by RCW 34.05.443(2) which authorizes a presiding officer to impose conditions upon an intervenor's participation at the time intervention is granted or at any subsequent time. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)

Some divergence of interest must be shown to warrant granting of intervention. The term "interest" is to be construed broadly. *Progress v. Vancouver* 99-2-0038 (MO 11-30-99)

Under RCW 36.70A.270(7) the test for intervention is found in RCW 34.05.443. *Butler v. Lewis County* 99-2-0027 (MO 10-28-99)

Intervention was denied because the next hearing would not involve a request for recision of invalidity, it was not the appropriate time for submission of new information and a GMHB does not have jurisdiction over the permitting of specific projects. *ICCGMC v. Island County* 98-2-0023 (MO 7-6-99)

Where a city's motion to intervene in a compliance hearing was untimely, the motion will be denied. *Abenroth v. Skagit County* 97-2-0060 (CO 3-29-99)

The motion clearly demonstrated that potential intervenors had a long history of involvement in the subarea plan which was the gravaman of the case. Potential intervenors further demonstrated that their interests would not necessarily be represented by the county. *Carlson v. San Juan County* 99-2-0008 (MO 3-29-99)

WAC 242-02-270 provides that whether a person qualifies for intervention is based upon applicable provisions of law as well as consideration of the applicable superior court civil rules. The granting of intervention must be in the interest of justice and shall not impair the orderly and prompt conduct of the proceedings. *Smith v. Lewis County* 98-2-0011 (MO2 12-22-98)

Where a citizens' group opposed to the petitioners citizens' group demonstrated an interest in the outcome of the proceedings and that the interest may be impaired if the opposition group was not permitted to intervene, intervention was granted. *CMV v. Mount Vernon* 98-2-0012 (MO 9-22-98)

Where a property owner has an interest that may not be adequately protected by existing parties and the property was one whose designation was being challenged, adequate grounds for intervention was shown. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

Intervention was granted subject to the conditions that the intervenors were limited to the issues set forth in and by all other requirements of the prehearing order. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

Where constitutional challenges were the sole basis for the request for intervention it was denied. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

The GMA has no intervention provisions and hence no conflict with RCW 34.05. Thus the APA rather than the provisions of WAC 242-02 are the controlling requirements. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

In order the qualify under any provision of law, CR 24 (a)(2) requires that an applicant for intervention must show an interest in the case that is not adequately protected by existing parties. Some factual information must be shown. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

In order to qualify for permissive intervention some facts must be submitted in support of the request. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

Where a large number of additional parties requested intervention in a case that already had approximately 40 parties, granting the interventions would have impaired the orderly and prompt conduct of the proceeding and therefore the requests were denied. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

Intervenors will only be permitted to address issues that were raised by a timely filed PFR. Intervention is not a vehicle for allowing admittance of a belated PFR. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

Intervention was granted where parties own property in various parts of the county, specific facts supporting the request for intervention were set forth and no existing party objected. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)

After the 1996 amendments to RCW 36.70A.270(7), qualifications for intervention are to be established by RCW 34.05.443. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)

There are three separate tests to determine whether to grant intervention status: (1) whether a party qualifies under "any provision of law" (WAC 242-02-270(2) and CR 24), (2) where the intervention is sought in the interest of justice and, (3) and where there is no impairment of orderly and prompt proceedings. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)

In order to demonstrate whether a potential intervenor has shown an "interest" in the case to support intervention as a matter of right, some factual information must be shown. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)

In order the qualify as an intervenor an applicant must provide a factual basis as to why existing parties could not or would not adequately represent the interests of the applicant. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)

In order to qualify under CR 24 for permissive intervention an applicant must submit facts showing qualification or appropriate grounds for intervention. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)

Allowing an additional 47 parties to intervene in a case involving 13 existing parties would impair the orderly and prompt conduct of the proceeding under RCW 34.05.443(1), particularly absent a factual showing of reasons to allow the interventions. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 5-22-96)

An intervenor waived the right to object to jurisdiction at the hearing on the merits when conditions which granted intervenor status were accepted. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

The provisions of WAC 242-02-270 determine the test for granting or denying intervenor status. Limitations to the existing issues and existing schedule is normally a condition of granting intervention. *FOSC v. Skagit County* 95-2-0065 (MO 4-10-95)

The failure of potential intervenors to attach proposed pleadings to their motion for intervention was not fatal since an answer or other responsive pleading is not required by WAC 242-02. *CCNRC v. Clark County* 92-2-0001 (MO 8-4-92)

Where there was no evidence that delays would occur as a result of the intervention, it was granted subject to conditions. *CCNRC v. Clark County* 92-2-0001 (MO 8-4-92)

INVALIDITY

1. In General

In order for a GMHB to modify and/or rescind a determination of invalidity, there must be an ordinance or resolution adopted in response to the finding of invalidity and a local government request that the finding be modified or rescinded. *Panesko v. Lewis County* 00-2-0031 (Amended RO 4-18-01)

A county may request a "clarification" of a previously issued determination of invalidity under RCW 36.70A.302(6). A FDO dated 11-30-00 which included a determination of invalidity was perspective

only and did not affect vested permits. Additionally, it was not the intention of the order to prohibit a single-family residence from being built on a lot where an existing guesthouse was already permitted or had been built. *Friday Harbor v. San Juan County* 99-2-0010 (MO 4-6-01)

Where a subsequent LAMIRD ordinance reduced the areas that were established in the CP, the burden of showing substantial interference rests with the petitioners. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The imposition of a determination of invalidity does not have any effect on previously vested rights. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

A request for declaratory ruling that is in essence a request for clarification under RCW 36.70A.302(6) will be treated as a request for clarification and processed with an expedited hearing and a decision within 30 days of the hearing. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)

A determination of invalidity does not affect previously vested rights under RCW 36.70A.302(2). *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

Under the 30 day time constraint found in RCW 36.70A.302(6) the issues of recision and/or modification of invalidity were bifurcated from the issues of noncompliance not involving invalidity, which would be addressed in a subsequent order. *Dawes v. Mason County* 96-2-0023 (CO 12-15-00)

The provisions of RCW 36.70A.330(2) requiring a written decision within 45 days of the time a motion for recision/modification is filed by a local government deals with situations where the local government has enacted a response to a determination of invalidity. The provisions of RCW 36.70A.302(6) requiring a written decision within 30 days from an "expedited" hearing for "clarifying, modifying or rescinding" a determination of invalidity involves questions as to the scope of the invalidity and usually occurs before a local government has completed its response. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)

While a GMHB often only facially reviews an ordinance adopted in response to a determination of invalidity because of the 45-day limitation, there is no prohibition against reviewing the record and ordinance in depth under RCW 36.70A.330(1). *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)

Even though a period of time passed since noncompliance was found, unless there is new evidence of substantial interference a GMHB will not change the previous determination under the record in this case. However, continued long-term failure to meet a schedule of compliance would result in a reconsideration of invalidity and a possible recommendation for sanctions. *Abenroth v. Skagit County* 97-2-0060 (CO 9-23-98)

Under the amended provisions of RCW 36.70A.290(1) the issue of substantial interference with the fulfillment of the goals of the GMA must properly be raised. A requested remedy of a determination of invalidity is not sufficient to raise the issue. *CMV v. Mount Vernon* 98-2-0006 (RO 9-4-98)

Under the ruling in *Skagit Surveyors v. Friends* 135 W.2d 542 (1998), a GMHB does not have statutory authority to invalidate pre-GMA DRs. Therefore, the previous orders of April 10, 1996, and October 6, 1997, were vacated. *WEAN v. Island County* 95-2-0063 (CO 8-25-98)

A claim of invalidity which was not set forth as an issue in the petition nor in the original or supplemental prehearing order will not be considered because of the 1997 amendment to RCW 36.70A.290(1) stating that absent a claim in the statement of issues or prehearing order a GMHB is precluded from deciding or addressing an issue. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

The burden of showing substantial interference with the goals of the GMA is a higher one than the clearly erroneous standard. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

A GMHB will declare invalid only the most egregious of noncompliant provisions whose continued invalidity most threaten the local government's future ability to achieve compliance with the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

A petitioner's motion for invalidity on additional sections of a zoning code is an additional remedial order. A party may make such a request at any time even if a prior order of invalidity has been entered. *WEAN v. Island County* 95-2-0063 (CO 10-6-97)

A GMHB will review a DR's language and also its interpretation by those who administer it in deciding whether the regulation meets the substantial interference test. *WEAN v. Island County* 95-2-0063 (CO 10-6-97)

An extended length of time that a local government is without a compliant ordinance for CAs may be a ground for a finding of invalidity. *Diehl v. Mason County* 95-2-0073 (CO 9-18-97)

After determination of invalidity a development application can vest only to an ordinance that is (1) enacted in response to the invalidity and (2) complies with the goals and requirements of the GMA. *Seaview v. Pacific County* 95-2-0076 (MO 5-28-97)

Invalidity is not a separate issue in a case but is rather a part of the overall requested relief. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

A GMHB will declare invalid elements of a CP or DRs that most seriously threaten a local government's future ability to adopt compliant planning legislation. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

A GMHB reviews an action or failure to act for the potential to substantially interfere with the goals of the GMA since a finding of invalidity cannot extinguish rights that have vested prior to the date of the order. *Seaview v. Pacific County* 95-2-0076 (CO 2-6-97)

In reviewing the potential for substantial interference, a GMHB looks to the language of the regulation and the experience, if any, a local government has had in dealing with the actions or inaction being challenged. *Seaview v. Pacific County* 95-2-0076 (CO 2-6-97)

Once substantial interference has been shown a GMHB then determines the scope of the invalidity. A decision regarding the scope of the invalidity takes into account the local government's compliance or noncompliance along with current and past efforts to achieve compliance and meet the deadlines established by the Legislature. *Seaview v. Pacific County* 95-2-0076 (CO 2-6-97)

An ordinance may only be declared invalid if it substantially interferes with the goals of the GMA. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

Under RCW 36.70A.300 and .330 a GMHB must review GMA actions by local governments to determine if such actions substantially interfere with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

The decision about what action to take after a determination of invalidity is totally up to the local government affected by it. A GMHB has no further role except to later determine whether to modify or rescind a finding of invalidity. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

Any property right that has vested under either state or local law before a determination of invalidity continues and is unaffected in any manner by a determination of invalidity. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

Any vested or pre-existing noncontiguous legal lot prior to the determination of invalidity is not affected by a determination of invalidity. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

After a determination of invalidity any development application can only vest to an ordinance or resolution that is enacted in response to the determination of invalidity and which is also determined by a GMHB to comply with the GMA. RCW 36.70A.300(3)(b). *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

A GMHB does not have jurisdiction to consider or make a ruling on what constitutes a vested permit or lot or what constitutes a pre-existing legal lot. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

A determination of invalidity merely precludes vesting until a local government complies with the GMA. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

Whether a particular property is or is not vested must be determined in a forum other than a GMHB. *FOSC v. Skagit County* 95-2-0065 (CO 8-28-96)

The remedy of invalidity is to be used only in the most egregious cases. This record contained no compelling evidence of a purposeful delay or an abnormal number of applications for subdivision in potential RLs as a result of such delay. Therefore, the request for invalidity was denied. *FOSC v. Skagit County* 95-2-0075 (CO 8-15-96)

When no DRs to protect CAs had been adopted but an ordinance allowed residential development within a designated CA, a GMHB had the jurisdiction to decide if continued use of such ordinance substantially interfered with the goals of the GMA. *Seaview v. Pacific County* 95-2-0076 (CO 7-31-96)

When no previous determination of invalidity has been made, RCW 36.70A.330(3) requires a GMHB to consider whether invalidity should be found at the time of compliance hearing. *Seaview v. Pacific County* 95-2-0076 (CO 7-31-96)

The date upon which a finding of invalidity suspends vesting is the moment of time on the day that a local government is served with, or has actual knowledge of, the finding of invalidity. *FOSC v. Skagit County* 96-2-0009 (MO 7-24-96)

Under RCW 36.70A.330(3)(a) and (b) the phrase "the date" refers to both the day and the time that a jurisdiction has been served with or has actual knowledge of an order of invalidity. *FOSC, Petitioner* 96-2-0009 (FDO 7-24-96)

A GMHB has jurisdiction to determine whether pre-existing non-GMA DRs are invalid. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

The substantially interferes standard is intended to focus on DRs or CPs whose continued implementation seriously threatens local governments' future ability to adopt planning legislation which complies with the GMA. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

A determination of invalidity cannot preclude local government consideration for a building permit for pre-existing, platted, noncontiguous lots of separate legal ownership. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

A GMHB must specify the particular parts of a regulation determined to be invalid and the reasons therefore. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Even though a local government adopted the "existing code" it was nonetheless a GMA action subject to review for compliance and/or invalidity. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Had the Legislature intended the new remedy created by new subsections of ESHB 1724 to apply only to DRs adopted under GMA, it could have used the same language "under this chapter" found in other sections of the GMA. *FOSC v. Skagit County* 95-2-0065 (CO 2-7-96)

Invalidity requires more than simple noncompliance and a GMHB will only determine invalidity for sections of a zoning code which most egregiously interfere with the local government's future ability to fulfill the goals of the GMA. *FOSC v. Skagit County* 95-2-0065 (CO 2-7-96)

The result of an invalidity finding is merely to test new permits under an ultimately determined compliant action taken by a local government. *FOSC v. Skagit County* 95-2-0065 (CO 2-7-96)

The definition of CP found in RCW 36.70A.030 involves a requirement that it be adopted pursuant to the GMA. The definition of DR has no such limitation. At a compliance hearing if no previous order of invalidity has been entered a GMHB must consider whether such an order should then be imposed. Thus, a GMHB may impose invalidity on existing DRs regardless of whether they were adopted pursuant to GMA. *WEAN v. Island County* 95-2-0063 (CO 12-19-95)

Where no CP nor DR has been adopted and the deadlines established by the Legislature have passed, a GMHB has authority to invalidate portions of an existing zoning code adopted before the GMA became effective. *WEAN v. Island County* 95-2-0063 (CO 12-19-95)

A necessary prerequisite to a finding of invalidity is a finding of noncompliance. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

A GMHB does not have the authority to impose regulations even under an invalidity finding. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

A finding of invalidity should only be made in the most extreme or egregious circumstances. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

A party claiming invalidity has the burden of proof of showing substantial interference with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

When amendments to RCW 36.70A.300 and .330 (ESHB 1724 Sections 110 and 112) became effective subsequent to a compliance hearing during which hearing the application of the sections were thoroughly discussed and post-hearing briefing was received from the parties, and the compliance order was issued after the effective date of the amendments, a GMHB has authority to impose invalidity. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

When an amendment to a statue is clearly remedial it is construed to apply retroactively even if not expressly stated. The invalidity provisions of ESHB 1724 are clearly remedial and are applied retroactively. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

Imposition of invalidity by a GMHB requires a determination that a DR would substantially interfere with the goals of the GMA. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

At the hearing on the merits or at a compliance hearing the party asserting substantial interference with the goals of the GMA has the burden of proof. *WEC v. Whatcom County* 94-2-0009 (CO 2-28-95)

2. Finding

Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The use of a 35-foot buffer in Type 1 waters under SMP designations "suburban" and "urban" areas continue to substantially interfere with the goals of the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Under BAS established in this record a 25-foot buffer for Type 4 and 5 waters is "functionally ineffective." A buffer averaging provision allowing a fifty percent reduction to a 25-foot buffer for minor new development does not comply with the Act and substantially interferes with Goal 10 of the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The allowance of transient rentals in designated RLs without any analysis of impacts of such transient rentals to assure that no incompatible uses adjacent to and within such RLs are created, does not comply with the Act and substantially interferes with Goal 8 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The designation of a LAMIRD involving 2-acre lot sizes is not an "intensive" rural development under RCW 36.70A.070(5)(d). Such a LAMIRD designation also substantially interferes with Goals 2 and 12 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

Under the record in this case, the county improperly included vast areas of undeveloped property in its LAMIRD designations. Such areas are noncompliant and further substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl. Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A DR which allows any nonconforming use to convert to a different nonconforming use within the rural areas of the county does not comply with the Act and substantially interferes with Goals 1, 2, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Allowance of the same kinds of uses as those allowed in LAMIRDs for all other rural areas denominated as "rural development districts" does not comply with the Act and substantially interferes with Goals 1, 2, 10, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

DRs which substantially intensify the uses allowed in a LAMIRD beyond those in existence on July 1, 1993, for Lewis County do not comply with the Act and substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

In designating a LAMIRD the area and the uses must be in existence on July 1, 1993, for Lewis County and such area and uses must be minimized and contained. Failure to comply with these requirements under the record in this case also substantially interferes with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A variety of rural densities required under .070(5) are not met by conclusionary undocumented statements regarding the effect of CAs. A uniform 1:5 density does not meet the requirements for reducing low-density sprawl, maintaining rural character, assuring visual compatibility, and containing rural development. Such a uniform density allows incompatible uses adjacent to RLs and reduced protection of CAs. Such action substantially interferes with Goals 1, 2, 8, and 10. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

DRs which allow fifteen percent residential subdivision, RV parks, boat launches, etc., parks, golf courses, restaurants and commercial services all in designated RL areas do not comply with the Act and substantially interferes with Goal 8 of the Act under recent Washington State Supreme Court cases. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Under the record in this case, the commercial/industrial needs analysis and shift of urban commercial/industrial allocation to non-urban areas substantially interferes with Goals 1 and 2 of the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)

Reducing buffers for minor new development defined in the CAO to widths smaller than those adopted for major activities substantially interfered with Goals 10 and 14 of the Act. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

Where the County's DR allowed significant uses in LAMIRDs which were not principally designed to serve the rural population under RCW 36.70A.070(5)(d)(i) and that did not protect the rural character of the area under RCW 36.70A.070(5)(c), substantial interference of the goals of the Act has not been removed. *Dawes v. Mason County* 96-2-0023 (CO 12-15-00)

Allowance of a second "guesthouse" as an ADU on every SFR lot in designated rural lands and/or RLs without any analysis of the density impact substantially interferes with the goals of the Act and is determined to be invalid. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)

One dwelling unit per acre is not an ARL density that complies with the Act. It also substantially interferes with Goals 2, 8, 9 and 10. *Diehl v. Mason County* 95-2-0073 (CO 7-24-00)

An EIS is designed to ensure awareness of potential environmental impacts by the decision maker. It does not dictate a particular legislative action and is thus an inappropriate document upon which to impose a finding of invalidity. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A provision which allows densities more intense than 1 du per10 acres and allows "opt out" at the property owner's choice does not comply with GMA regarding RLs and substantially interferes with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Ambiguous and nondirective CP policies that fail to encourage development in urban areas or reduce sprawl and maps that are generalized and in many cases inaccurate in the designation of UGAs, did not comply with the Act. A CP must include objectives, principles and standards that are directive. DRs are to be consistent with and implement the CP and may not be used as a mechanism to automatically amend the CP or render it meaningless. Under the record in this case petitioner's burden of showing substantial interference with the goals of the Act has been satisfied. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

There is no authority in the GMA to apply a provisional or preliminary FCC designation. With no adherence to RCW 36.70A.350 in the CP and a purported provisional vesting designation, the designation substantially interferes with Goals 1, 2 and 12 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

In order to be compliant with the Act the designation of an MPR under RCW 36.70A.360 must comply with the requirements of that section. There is no authority to apply a preliminary or provisional designation to an MPR until the requirements .360 are fulfilled. Under the record in this case there is no showing that the location is a setting of significant natural amenities. The failure to adhere to the requirements of the Act and purportedly apply a provisional designation to the MPR substantially interferes with Goals 1, 2 and 12 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The inclusion of 263 acres of ARL within an ILB designation substantially interfered with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A purported ILB "reserve area" was without authority and did not comply with the GMA. The Legislature required only two sites to be designated ILB under RCW 36.70A.367. Additional designations substantially interfered with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The adoption of a uniform 1 dwelling per 5 acres in the rural areas does not satisfy the requirements of .070(5) and substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The allowance of unlimited clustering does not comply with the Act when its purpose is to assure greater densities in rural and resource areas and not to conserve RLs and open space. When allowable clustering results in urban, and not rural, growth it substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A CP which designates 10 small town LAMIRDs, 7 crossroads commercial LAMIRDs, rural freeway interchange commercial areas on every freeway interchange in the County, 2 industrial LAMIRDs

involving 357 acres and 920 acres, 5 lake area and 4 regular area shoreline LAMIRDs, a "floating" LAMIRD for tourist services and 12 suburban enclaves which consist of "preexisting non-rural development" does not comply with the Act and substantially interferes with the goals of the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The provisions of RCW 36.70A.070(5)(e) prohibit the designation of an industrial LAMIRD that is a major industrial development unless the designation is specifically permitted under RCW 36.70A.365. The designation of an "industrial" LAMIRD that did not comply with RCW 36.70A.365 and also did not independently comply with the provisions of RCW 36.70A.070(5)(d) as to the proper establishment of the built environment and LOB, did not comply with the Act and substantially interfered with Goals 1, 2 and 12. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The failure to include BAS to protect priority species and FWHCAs because of inadequate buffering as well as the failure to protect shellfish areas along with the failure to adopt compliant designations and DRs which were due 9-1-92, substantially interfered with Goals 9 and 10 of the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

Where the subarea plan directs that a specific location is most suitable for light industrial growth, a DR that does not implement the subarea plan policy but rather allows unlimited commercial activity in the location, does not comply with the Act. Because of the small area delineated and the rapidly expanding nature of commercial development without any effective controls, substantial interference with Goals 5 and 11 are found. *Birchwood v. Whatcom County* 99-2-0033 (FDO 2-16-00)

Where a county requests clarification of the scope of a finding of invalidity with a motion for reconsideration and demonstrates that a limitation of areas is consistent with the FDO, reconsideration will be granted and invalidity will not apply to villages, hamlets, and activity centers. *Friday Harbor v. San Juan County* 99-2-0010 (RO 8-25-99)

Under the record here, allowing densities more intense than 1 du per 5 acres surrounding RL designated areas substantially interferes with Goal 8 of the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

Allowing densities more intense than 1 du per 10 acres in agricultural RL and 1 du per 20 acres in designated forestry RL, under the record here, substantially interferes with Goal 8 of the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

Substantial interference with the goals 1, 2, 8, 9, 10, 12, and 14 was found for allowance of lots less than 5-acre minimums in rural areas (including shoreline areas) which were outside designated villages, hamlets, or activity centers. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

Two-acre and ½ acre lots outside an UGA, under the record here, substantially interferes with goals 1, 2, and 12. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

Where a reasonable person could be confused as to the scope of the order finding invalidity, a clarification excluding uses within the UGAs will be granted. *Abenroth v. Skagit County* 97-2-0060 (MO 6-7-99)

Under the record in this case, where it is clear the county must reconsider certain parts of its rural agricultural designation for potential RL designation, invalidity will apply to those areas in the Rural-Ag

designation which allow greater density than that allowed in the agricultural RL zone. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

Under the record in this case, certain AMIRDs were found noncompliant. A finding of invalidity was also imposed. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

Substantial interference with Goals 2, 8, and 10 were found where the local government failed to adopt permanent DRs to address risks of avulsion, together with the continued allowance of unmonitored diking activity, the continued allowance of an inappropriate level of construction in the floodway and the failure to include BAS. *Diehl v. Mason County* 95-2-0073 (CO 5-4-99)

The allowance of a range of uses including auction houses, auto sales, banks, bowling alleys, etc., in rural areas did not comply with the GMA and substantially interfered with Goals 1, 2 and 8. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

Where rural areas are not limited in size and density to preclude future need for urban services and measures to minimize and contain intensive rural development are not adopted, a determination of invalidity is found. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

An ordinance which allowed subdivision of agricultural lands into parcels smaller than 10 acres in conjunction with a finding by the county that acreage smaller than 10 acres could not be reasonably expected to have long-term commercial significance for agricultural use did not comply with the GMA. Additionally, such an ordinance substantially interfered with RCW 36.70A.020(8) and was declared invalid. *Diehl v. Mason County* 95-2-0073 (CO 12-18-98)

A DR which allowed 1 unit per 5-acre density within agricultural RLs did not comply with the GMA. Additionally, such ordinance substantially interfered with RCW 36.70A.020(8) and was declared invalid. *Diehl v. Mason County* 95-2-0073 (CO 12-18-98)

Where the record demonstrated that a greater variety of rural densities, a decrease in urban and rural sprawl and an increase in RL conservation would be achieved by a greater than 5-acre minimum lot size, maintaining a minimum 5-acre lot size throughout the county did not comply with the GMA and substantially interfered with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

The test of whether a DR meets the substantial interference criterion depends on 3 factors:
The egregiousness of the violation of GMA goals;
The length of time the violation has occurred;
The likelihood that the violation will continue to occur absent invalidation.

WEAN v. Island County 95-2-0063 (CO 10-6-97)

An ordinance which allowed expansion of existing commercial or industrial uses other than resource based or rural neighborhood commercial uses to the full size of the existing parcel in areas outside of an UGA, substantially interfered with the goals of the GMA and was declared invalid because it allowed urban growth in rural areas. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)

Continued incremental movement of an UGA boundary that promotes sprawl and inefficient use of tax money did not comply, and also substantially interfered, with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

Under the test found in RCW 36.70A.300 the failure to take effective steps to conserve RLs and prevent further urban growth outside of UGAs renders the ordinances in questions invalid. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

Where substantial over-sizing and lack of analysis was found as to IUGAs and substantial interference with the goals of the GMA was proven, invalidity was imposed. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Where no designation of agriculture lands was set forth in an ordinance invalidation would serve no purpose and therefore was not imposed. *Diehl v. Mason County* 95-2-0073 (CO 9-6-96)

A DR which allowed expansion of 1 and 2.5 acre minimum lot sizes in rural areas prior to adoption of RL designations and conservation and before an overdue CP was completed substantially interfered with the goals of the GMA. *FOSC v. Skagit County* 95-2-0065 (CO 8-28-96)

The emergency provisions allowing waiver of SEPA compliance did not apply to "citizen confusion over property rights" after a determination of invalidity under WAC 197-11-880. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

The allowance of new urban commercial and new urban industrial growth outside properly established IUGAs substantially interfered with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Invalidity was found for rural densities more intense than 1 dwelling unit per 3 acres and above, under the record in this case. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Under the record in this case the allowance of densities of 1 dwelling unit per 2 acres and greater densities in areas outside properly established IUGAs substantially interfered with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

The recision of an ordinance limiting development in rural areas to 1 dwelling unit per 5 acre and/or failing to adopt any DRs to preclude new urban growth and prohibit extension of urban governmental services outside of IUGAs, thus violating GMA goals to reduce sprawl, conserve RLs, and protect CAs, along with a consistent record of missing deadlines, were compelling reasons to make a determination of invalidity. *FOSC v. Skagit County* 95-2-0065 (CO 2-7-96)

Where a CAO was adopted more than four years past the deadline during which severe and irreparable damage to the environment resulted and where such damage was continuing as a result of the inadequacy of protection of the new ordinance, substantial interference with the goals of the GMA was found and the new ordinance was invalid. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

The net yield criterion and the opt out provision of Jefferson County's forestlands DR substantially interfered with Goal 8 of the GMA. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

3. Recision/Modification

A county may adopt an ordinance amending development regulations that the board had declared invalid by providing for an expansion or additions to school structures in rural areas and rural activity centers without interfering substantially with the fulfillment of the goals of the Act. *Dawes v. Mason County*, Case 96-2-0023c (CO 2-1-02) (Order Re: Interim Development Regulation Ordinance 148A-01)

A county may not move, under RCW 36.70A.302(6), to amend an ordinance by adding childcare or daycare centers to a Matrix of Permitted Uses previously declared invalid as part of an effort to remove invalidity. The finding of invalidity addressed only the Matrix of Permitted Uses in effect at the time. Amending the Matrix to include childcare or daycare centers which were not part of the original Matrix of Permitted Uses represents a new amendment to the comprehensive plan. This amendment is properly considered either in a new case or in a compliance hearing rather than a motions hearing under RCW 36.70A.302(6). *Dawes v. Mason County*, Case 96-2-0023c (CO 3-4-02) (Order Denying Motion to Rescind Invalidity)

A county may adopt an ordinance amending development regulations that the board had declared invalid by providing for an expansion or additions to school structures in rural areas and rural activity centers without interfering substantially with the fulfillment of the goals of the Act. *Dawes v. Mason County*, Case 96-2-0023c (CO 2-1-02) (Order Re: Interim Development Regulation Ordinance 148A-01)

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Buffer width requirements for Type 1 waters involving minor new development establishing a 150 foot width in "natural" areas, a 75 foot width in "conservancy" areas and a 50 foot width in "rural" areas removes substantial interference. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area to 20,000 square feet removed substantial interference as to minor new development in Type 2, 3, and 4 waters. However, the county's failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

A local government has the burden of proof to demonstrate that an ordinance it enacted in response to a determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the Act. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

In order for a GMHB to modify and/or rescind a determination of invalidity, there must be an ordinance or resolution adopted in response to the finding of invalidity and a local government request that the finding be modified or rescinded. *Panesko v. Lewis County* 00-2-0031 (Amended RO 4-18-01)

The adoption of an interim ordinance to amend a previously invalidated matrix of permitted uses to allow fire stations and accessory structures removes substantial interference as to that use only.

A compliance hearing is necessary before a decision on compliance may be reached. *Diehl v. Mason County* 96-2-0023c (MO 4-18-01)

A county has the burden of showing that the ordinance that was enacted "in response" to a determination of invalidity will no longer substantially interfere with the goals of the Act under RCW 36.70A.320(4). Where ordinances have been adopted prior to a finding of invalidity, a county accepted its burden for a request to rescind or modify those determinations of invalidity. Where no motion to rescind or modify was filed, the 45-day time limitation of RCW 36.70A.330(2) did not apply. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A GMHB may bifurcate the compliance aspect of a case from the invalidity rescission motions because of the short time frame allowed for invalidity rescission findings. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

A local government has a burden of proof, under RCW 36.70A.320(4), that its action removes substantial interference with the goals of the Act in order to rescind or modify invalidity. *Panesko v. Lewis County* 00-2-0031c (MO 2-26-01)

A petition for declaratory ruling that is in essence a request for clarification of a previous determination of invalidity under RCW 36.70A.302(6), will be handled through that provision and the declaratory ruling request will be ignored. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)

A one-acre property virtually filled with a community center building with no further opportunity for development and substantial interference with Goal 8 of the Act will result in a rescission of invalidity. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

Where a matter was not clear from the briefing and argument leading to a FDO, but became clearer on a motion for reconsideration, a revision of the determination of invalidity as to a one acre piece of property is appropriate. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

Where a County downsized its LAMIRDs, established maximum rural density and matched capacity with the LAMIRD population allocations, set LOBs and capped clustering provisions, substantial interference with the Act was removed. *Dawes v. Mason County* 96-2-0023 (CO 12-15-00)

Pursuant to RCW 36.70A.320(4) a local government subject to a determination of invalidity has the burden of demonstrating that the ordinance that it enacted in response to the initial determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the Act under the standard expressed in RCW 36.70A.302(1). *Diehl v. Mason County* 95-2-0073 (CO 12-1-00)

The provisions of RCW 36.70A.330(2) requiring a written decision within 45 days of the time a motion for recision/modification is filed by a local government deals with situations where the local government has enacted a response to a determination of invalidity. The provisions of RCW 36.70A.302(6) requiring a written decision within 30 days from an "expedited" hearing for "clarifying, modifying or rescinding" a determination of invalidity involves questions as to the scope of the invalidity and usually occurs before a local government has completed its response. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)

A prior finding of invalidity regarding an IUGA ordinance is not rescinded automatically by adoption of a CP, under the provisions of RCW 36.70A.302(7)(a). A local government must enact an ordinance in response to the invalidity, obtain a compliance hearing and a ruling that the "plan or regulation as

amended" no longer substantially interferes with the fulfillment of the goals of the Act. A determination of invalidity remains in effect until such time as a local government asks for and receives a finding from a GMHB that the new action no longer substantially interferes with the goals of the Act. *Smith v. Lewis County* 98-2-0011c (CO 7-13-00)

When an IUGA ordinance dealing with restrictions on rural growth is superceded by an adopted CP, the issues in the case are not moot although they may well be addressed in a corresponding FDO in the CP process. Continued noncompliance and invalidity was found. *Smith v. Lewis County* 98-2-0011c (CO 7-13-00)

Where a record fails to show why a previously invalidated area of land remained in the RAID, the local government's burden of proof is not met. *ICCGMC v. Island County* 98-2-0023 (CO 11-23-99)

Where the record contained new evidence of development of a previously invalidated plat that was now appropriate for inclusion within a RAID, recision of invalidity was granted. *ICCGMC v. Island County* 98-2-0023 (CO 11-23-99)

A county may not continue to include previously invalidated "large lots" in a RAID for the purpose of connectivity, without evidence in the record that such lots constitute logical outer boundaries. The fact that excluding the lots from the RAID would create nonconforming lots is not sufficient evidence to warrant recision of invalidity. *ICCGMC v. Island County* 98-2-0023 (CO 11-23-99)

Where the local government has not met its burden of demonstrating that substantial interference has been removed and petitioners have overcome the presumption of validity and proved noncompliance with the GMA, recision of a prior determination of invalidity will not be entered. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

When an ordinance adopted in response to a determination of invalidity continued to allow non-rural densities in rural areas, and the local government failed to carry its burden of proving the elimination of substantial interference and petitioners proved noncompliance, a prior determination of invalidity will continue. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

A GMHB will modify or rescind a determination of invalidity only if the amended plan or regulation no longer substantially interferes with the fulfillment of the goals of the GMA. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

In order to sustain its burden of proof for recision of a commercial/light industrial zoning invalidity finding, a local government must include an analysis of future allowable commercial/retail uses in the record. *Abenroth v. Skagit County* 97-2-0060 (RO 7-23-98)

The retail activities allowed by an ordinance were not sufficiently restrictive to sustain the county's burden of showing that substantial interference with the GMA no longer applied. *Abenroth v. Skagit County* 97-2-0060 (RO 7-23-98)

A superior court decision upheld the January 26, 1998, refusal to rescind invalidity where the county adopted criteria linked to GMHB orders. The court directed that recision of invalidity be granted for the 4 zones for which the county had established "procedural" criteria. Additional conditions from the Superior Court were imposed. *WEAN v. Island County* 95-2-0063 (MO 6-25-98)

Where the superior court remand was precise in its holding, a formal motion by a local government and a further hearing was not required prior to entry of an order rescinding invalidity. *WEAN v. Island County* 95-2-0063 (MO 6-25-98)

A local government has the burden of proving that its action, adopted in response to a determination of invalidity, no longer substantially interferes with the fulfillment of the goals of the GMA. It is no longer necessary that the action comply with the GMA only that it removes substantial interference. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)

A GMHB will review a request for recision of invalidity in the same manner that it reviews a request for compliance, *i.e.* whether after the remand the new action removes substantial interference and not necessarily whether the recommendations contained in the FDO have been followed. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)

Submission of a proposed interlocal agreement and a draft concurrency ordinance to counter a previous finding of invalidity that was based on the lack of strong provisions in place to prevent low-density sprawl, did not remove the substantial interference with the goals of the GMA. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)

A change in a market factor analysis from what was agreed to in a CPP did not comply with the GMA and could not be used as a basis for a recision of invalidity. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)

A motion to clarify a determination of invalidity under RCW 36.70A.302(6) does not apply where the local government has taken legislative action. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)

On a motion to rescind invalidity a local government has the burden of showing that the legislative action adopted in response to a determination of invalidity no longer substantially interferes with the goals of the GMA. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)

A decision on whether a local government has removed substantial interference does not simply involve a review of whether items found in the order determining invalidity have been removed. A local government may not adopt an ordinance in response to a determination of invalidity that imposes new independent invalidity provisions. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)

Recent amendments to RCW 36.70A.330(2) did not change the requirement that a finding on a local government's motion to rescind invalidity must be made within 45 days of the date of the motion. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)

Under recent amendments to RCW 36.70A.302(7)(a), a local government may either amend an invalid plan or regulation or subject such plan or regulation to interim controls. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)

A local government must specifically articulate what will and will not be allowed in an invalidated zone or areas in order to sustain its burden of proof. Use of previous GMHB orders as a DR is insufficient. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)

It would be very difficult for a purely "procedural" DR to remove substantial interference. In this record the attempt to use such a procedural DR failed to sustain the county's burden of proof. *WEAN v. Island County* 95-2-0063 (MO 1-26-98)

Where a prior order or determination of invalidity was made and no corrective action followed, a GMHB will not rescind the previous determination of invalidity. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

Where a portion of the CP and/or DRs relate to a prior determination of invalidity, a local government had the burden of demonstrating the amended provisions no longer substantially interfered with the fulfillment of the goals of the GMA. If the county meets this burden the amendments are then presumed valid and the burden shifts to the petitioner to show that the county's action is not in compliance with the GMA. RCW 36.70A.320. *Wells v. Whatcom County* 97-2-0030 (FDO 1-16-98)

Under RCW 36.70A.330(2) a local government subject to a determination of invalidity may file a formal motion to modify or rescind. A finding is required within 45 days thereafter. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

Where no formal motion for recision has been made the issue is properly before a GMHB and the 45-day period begins at the time of filing of the local government's opening brief. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

Under recent amendments to RCW 36.70A.320(4), in a recision of invalidity hearing the local government has the burden of showing that it no longer substantially interferes with the fulfillment of the goals of the GMA. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

Once, or if, a local government meets its burden of showing it no longer substantially interferes with the fulfillment of the goals of the GMA, the petitioner then bears the burden under the clearly erroneous standard of proving the action does not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

Where a local government was subject to a determination of invalidity and noncompliance because of a failure to act and later took the required action, a facial review will be used to determine if substantial interference no longer applies. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

Where a discrete ordinance and a full record capable of being reviewed within the 45-day period was submitted along with a request for recision of invalidity and a finding of compliance, a GMHB will make a full review and issue a decision on compliance. If a PFR for the new ordinance is submitted within the 60-day limitation after publication, appropriate action will be taken thereafter. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

RCW 36.70A.140 provides a local government with greater discretion to limit public participation "as appropriate and effective" in dealing with a response to a determination of invalidity. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

Where a CP and/or DRs were adopted and referenced by a county as being in response to previous invalidity findings, the county had the burden to show that the new actions removed the substantial interference found in the previous cases. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)

Where a determination of compliance was made, an earlier finding of invalidity was rescinded. *Diehl v. Mason County* 95-2-0073 (CO 9-18-97)

A local government subject to a determination of invalidity has the burden of demonstrating that an ordinance adopted in response to the invalidity no longer substantially interferes with the goals

of the GMA under the 1997 amendments found in ESB 6094, effective July 27, 1997. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) & *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

Because RCW 36.70A.330(2) requires a finding within 45 days of a local government's motion to rescind invalidity, it is impossible to thoroughly review the record. A GMHB will only facially review the action to determine if it is a valid, good-faith attempt to comply. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) & *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

In reviewing changes made by a local government in response to a determination of invalidity, a GMHB reviews those changes to determine if they continue to substantially interfere with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) & *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

The adoption of CP UGAs does not render IUGA invalidity determinations moot because the ordinance was enacted in response to the order of remand and determination of invalidity under RCW 36.70A.300(3)(b). *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

Where new DRs for an industrial area were adopted which limited the area to large industrial uses and provided that costs of infrastructure were to be borne by new development rather than the public, the new designation no longer substantially interfered with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) & *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

Where a local government subsequently adopted a CP and DRs which addressed previous findings of invalidity and noncompliance, only a facial review will be made to determine whether the actions constituted a valid good-faith attempt to comply with the GMA and whether substantial interference with the goals of the GMA remained. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)

A new CP and DRs consisting of several hundred pages, adopted after years of public participation with an index list of over 170 items, will not be reviewed other than facially within the 45-day limitations under a motion to rescind invalidity. Such local government actions are entitled to the presumption of validity and the new record must contain obvious evidence that the actions continue to substantially interfere with the goals of the GMA. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)

The adoption of a temporary CAO which no longer substantially interfered with goals of the GMA, even though noncompliant, provided a basis for recision of invalidity. *WEC v. Whatcom County* 95-2-0071 (CO 7-1-97)

Where a new forest resource ordinance had been adopted and all parties mediated their differences and supported a finding of compliance and a recision of invalidity, the previous determination of invalidity was rescinded. *OEC v. Jefferson County* 94-2-0017 (CO 6-4-97)

A motion to rescind or modify a determination of invalidity requires that a GMHB make a finding within 45 days of the filing of the motion. *Seaview v. Pacific County* 95-2-0076 (MO 5-28-97)

In a hearing to rescind or modify invalidity with a 45-day deadline for a finding, it is not possible, nor reasonable to conclude that the Legislature intended a thorough, substantive review of a new CAs ordinance to determine if compliance with the GMA has been achieved. Rather, a facial review for the purpose of determining whether the ordinance constitutes a valid good-faith attempt to comply with the

GMA along with the presumption of validity set forth in RCW 36.70A.320 is the proper scope of review in a recision of invalidity hearing. *Seaview v. Pacific County* 95-2-0076 (MO 5-28-97)

Pursuant to RCW 36.70A.330(2)(a), a finding must be issued within 45 days of the filing of a motion to rescind by a local government subject to invalidity. *Seaview v. Pacific County* 95-2-0076 (MO 4-16-97)

A determination of invalidity cannot be modified or rescinded until a new DR complies with the GMA. *FOSC v. Skagit County* 95-2-0065 (CO 8-28-96)

The failure to comply with the requirements of RCW 36.70A.140 in adopting an ordinance in response to a determination of invalidity precludes consideration of recision. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

A GMHB has authority under RCW 36.70A.300(2) and .330(4) to modify a previous finding of invalidity. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

JURISDICTION

The 1995 and 1997 amendments to the GMA give rise to an entirely different scenario with regard to the initial final decision and order finding noncompliance than was the situation in *Association of Rural Residents, v. Kitsap County*, 141 Wn.2d 185 (2000). While the local government is still under a duty to cure noncompliance, it is clear from the 1995 and 1997 amendments that a board retains jurisdiction and has the authority to extend the remand period until compliance is achieved. In any event, what is clear is that the Legislature has expressed its intent on at least two separate occasions in 1995 and 1997 that a local government has the duty to comply with the Act and that duty continues beyond the initial remand period of the final decision and order. *Anacortes v. Skagit County*, 00-2-0049c (CO 1-31-02, pp. 9-10)

This Board has not ruled that we lack jurisdiction in any case in which issues we have remanded to a jurisdiction (the County) have been appealed by parties in the case to Superior Court. In *Wells, et al. v. Whatcom County*, Case 97-2-0030c, Order on Motion for Reconsideration, June 4, 1998, we ruled that we lacked jurisdiction only because the Motion for Reconsideration had been delayed for a period far in excess of the required ten days, long enough for petitioners to have filed an appeal with Superior Court, which they had. There was a time, prior to 1995, when a Growth Management Board's powers were limited to transmitting a finding of noncompliance to the Governor and recommending imposition of gubernatorial sanctions. Prior to 1995, no further hearings or other authority to take further action existed for the Boards under the GMA. In 1995, Boards were given the authority to find noncompliance and invalidity and "additional hearings" were authorized for the first time. In 1995, a separate section for invalidity determinations was created which noted that the validity of plans and regulations during the period of remand were not affected by an order of noncompliance and that jurisdiction continued during the remand period. We have retained jurisdiction in many of our cases while Superior Court appeals were pending, absent a court order directing otherwise. We reject the argument that we have no jurisdiction over a case while a Superior Court appeal is pending. We further reject the argument that we have previously declared such cases to be beyond our jurisdiction. *Dawes v. Mason County*, 96-2-0023c (CO 3-4-02) (Order Denying the Motion to Rescind Invalidity)

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A PFR which challenges a CP amendment is not moot even if a concomitant rezone is granted by the City and is unchallenged by petitioners. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)

Where three ordinances are challenged by a PFR and subsequently the county rescinds all three ordinances, jurisdiction to continue the case is lost. Where there are no DRs in effect for which a finding of compliance or noncompliance could be made a board must dismiss the case. *ARD v. Mason County* 01-2-0017 (MO 10-12-01)

An ordinance adopted pursuant to RCW 36.70A.390 without a public hearing, and that expired prior to the date of the HOM, divests the Board of jurisdiction to rule on the issue of compliance of the ordinance. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

A mere shifting of a DR to a new code section without any changes, does not establish jurisdiction to rule on the previously adopted ordinance. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A GMHB does not have jurisdiction to rule on "spot zoning" challenges. *PRRVA v. Whatcom County* 00-2-0052 (FDO 4-6-01)

A 1997 CP designation that was not appealed precludes GMHB jurisdiction when a later DR that is consistent with and implements the designation is adopted. *PRRVA v. Whatcom County* 00-2-0052 (FDO 4-6-01)

A GMHB retains jurisdiction over noncompliant actions regardless of and independent of any appeals that are filed, absent an order from the court of jurisdiction. *FOSC v. Skagit County 96-2-0025* (MO 3-8-01)

A local government's duty with regard to initially adopted RLs is vastly different than that with regard to CAs. Under section .060(1) a local government must adopt DRs to assure conservation of RLs in the initial planning stages. Those DRs remain in effect until implementing DRs are adopted contemporaneous with or subsequent to a CP. RL designations and DRs must be adopted anew and therefore jurisdiction exists to review the local government's action even if the designations and DRs are unchanged. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A re-adoption of a previous CA ordinance that does not involve any changes after the consistency review does not invoke jurisdiction to review the substance of the original CA ordinance. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Where a county has requested review of ordinances within the context of a previous FDO remand, even though the appeal period has passed on the specific ordinances, review is taken with regard to whether or not a finding of compliance is warranted. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Under RCW 36.70A.280 and .330 a compliance hearing must relate to and is governed by the original issues set forth in the FDO, as well as any new issues arising from the actions taken by the local government during the remand period. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

A GMHB does not have jurisdiction to review portions of an ordinance previously adopted and not challenged within the proper time-frames where the ordinance was only amended in very limited sections, none of which were involved in the PFR submitted in this case. *Parsons v. Mason County* 00-2-0030 (MO 11-27-00)

A petitioner's concern about a local government's hearing examiner system and the reluctance to incur the expense of a court appeal was beyond the scope of review authorized to a GMHB by the Legislature and did not constitute a violation of Goal 6. *Evaline v. Lewis County* 00-2-0007 (FDO 7-20-00)

To achieve participation standing under RCW 36.70A.280(2)(b) a person must have participated during the local government process regarding the matter on which the review is being requested. The term "matter" is not equivalent to the term "issue", nor is it equivalent to the term "enactment". The word "matter" refers to a "subject or topic of concern or controversy." *Wells v. WWGMHB*, 100 Wn. App. 657 (2000). & *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

In order to acquire standing a petitioner's participation must be reasonably related to the issue presented to a GMHB. A showing of some nexus between the participation and the issues raised is required. A GMHB has considerable discretion to determine whether the facts support the necessary connection in each case. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A GMHB does not have jurisdiction to determine whether a violation of RCW 36.70 regarding notice and methods of ordinance adoption existed. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Under RCW 36.70A.060(1) a County is required to readopt its RL designations and DRs in permanent form at the time of adoption of its CP. Jurisdiction thereafter exists for a GMHB to review both the RL designations and DRs in the CP even if adopted by reference, upon filing a proper PFR. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Where a PFR restated issues already decided in a compliance hearing, a GMHB will review petitioner's brief and any supplemental exhibits properly submitted and issue an FDO without the need of a

responding brief from the local government or a full HOM. *WEAN v. Island County* 00-2-0001 (FDO 6-26-00)

Under the authority of *LaCenter v. New Castle Investments* 98 Wn. App. 224 (1999), impact fees are not and cannot be development regulations, are not a part of the requirements of RCW 36.70A and therefore not within the scope of jurisdiction provided in RCW 36.70A.280. *Achen v. Battleground* 99-2-0040 (FDO 5-16-00)

A GMHB does not acquire jurisdiction to review an ordinance until a proper PFR is filed. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)

Under RCW 36.70B.020(4) a "project permit" means that only site-specific rezones "authorized by a CP" are outside the jurisdiction of a GMHB. Project permits do not include the initial adoption of a CP amendment. The change to a map or any part of a CP invokes the jurisdiction of a GMHB. *Evergreen v. Washougal* 99-2-0042 (MO 2-17-00)

Intervention was denied because the next hearing would not involve a request for recision of invalidity, it was not the appropriate time for submission of new information and a GMHB does not have jurisdiction over the permitting of specific projects. *ICCGMC v. Island County* 98-2-0023 (MO 7-6-99)

A GMHB has no authority to require a county to disband its boundary review board. *Abenroth v. Skagit County 9*7-2-0060 (CO 6-10-99)

A GMHB has jurisdiction to decide whether a county has complied with the GMA when it adopted a new CP and DRs and continued use of a previously adopted subarea plan without any review for consistency or readoption at the time of adoption of the CP and/or DRs. *Carlson v. San Juan County* 99-2-0008 (MO 5-3-99)

Issues not raised by a petitioner are prohibited from being addressed by a GMHB under RCW 36.70A.290(1). *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

A dispute between petitioners and the county that involves vesting and/or contract law is not within the jurisdiction of a GMHB. *Vines v. Jefferson County* 98-2-0018 (MO 1-21-99)

Questions concerning vesting and/or contract law are not within a GMHB's jurisdiction. *Vines v. Jefferson County* 98-2-0018 (MO 1-21-99)

An issue of "spot zoning" is beyond the jurisdiction of a GMHB. *CMV v. Mount Vernon* 98-2-0012 (MO 9-22-98)

Under the ruling in *Skagit Surveyors v. Friends* 135 W.2d 542 (1998), a GMHB does not have statutory authority to invalidate pre-GMA DRs. Therefore, the previous orders of April 10, 1996, and October 6, 1997, were vacated. *WEAN v. Island County* 95-2-0063 (CO 8-25-98)

Where an ordinance is not challenged within 60 days of publication of the notice of adoption, review is precluded. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

Filing a motion for reconsideration of a FDO is not necessary to obtain judicial review. RCW 34.05.470(5). *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)

Once an appeal to court has been made a GMHB loses jurisdiction over the issues relating to the court appeal for reconsideration purposes. *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)

The GMA establishes a jurisdictional statute of limitations of 60 days after publication as the cutoff for filing petitions. It is within the purview of the joint Boards to adopt a rule defining actual receipt of a petition for the establishment of the date of filing. *Weber v. Friday Harbor* 98-2-0003 (MO 4-16-98)

When the GMHB hearing and decision postdate the effective date of ESB 6094, the procedural aspects of that amendment apply. *Storedahl v. Clark County* 96-2-0016 (CO 12-17-97)

When a local government action was taken prior to July 27, 1997, the effective date of ESB 6094, but the GMHB hearing and decision was subsequent to that date, the procedural provisions of the new amendments apply to the decision in the case. Such provisions include substitution of the clearly erroneous standard for the previous preponderance burden. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

Under RCW 36.70A.280 and .290 there is no requirement that a PFR be served anywhere except at the appropriate GMHB office. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)

Where a local government did not demonstrate any prejudice from the failure to serve the PFR on it, a motion to dismiss was denied. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)

RCW 36.70A.270(7) authorizing the adoption of "rules of practice and procedure" does not authorize a GMHB to impose a jurisdictional service of PFR requirement when no such specific authority is provided in the GMA. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)

A GMHB does not have jurisdiction to determine compliance with the Planning Enabling Act, RCW 36.70. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

A GMHB has jurisdiction to consider invalidity of pre-GMA regulations. *WEAN v. Island County* 95-2-0063 (CO 10-6-97)

Recent amendments to RCW 36.70A.070(5) (rural element) do not apply to a local government action taken prior to July 27, 1997. *WEAN v. Island County* 95-2-0063 (CO 10-6-97)

A GMHB has no jurisdiction to invalidate DRs adopted under GMA and unchallenged within 60 days of publication of notice of adoption. *WEAN v. Island County* 95-2-0063 (CO 10-6-97)

For GMA planning counties adoption of amendments to the local SMP after July 23, 1995, are reviewed by a GMHB. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

The amendment to RCW 36.70A.290(2) authorizes a petition to a GMHB to include a challenge to whether the CP, DR, or amendments thereto adopted under GMA also comply with the SMA. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

RCW 36.70A.300 and .330 provide jurisdiction for a GMHB to review compliance of GMA actions with the SMA in subsequent compliance hearings since the goals and policies of the SMA and local SMP are now a part of the requirements of GMA under RCW 36.70A.480(1). *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

A GMHB does not have jurisdiction to award attorney's fees or costs of any type. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)

1995 amendments to RCW 36.70A.280 transferred jurisdiction to GMHBs to decide issues concerning amendments to local SMPs adopted by cities and counties planning under the GMA. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

Under RCW 36.70A.480(2) amendments to SMPs continue to be processed under the provisions of the SMA, which requires approval by DOE. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

A GMHB does not have jurisdiction to determine whether a particular property or permit application is or is not vested. *Seaview v. Pacific County* 95-2-0076 (MO 5-28-97)

Where an initial CP action was taken and not challenged within the 60-day time limit provided in the GMA, a GMHB does not have jurisdiction to review the alleged failure to adopt an amendment because of an alleged deficiency of the original action. *Quail Construction v. Vancouver* 97-2-0005 (MO 5-6-97)

A GMHB has jurisdiction to determine if a land use planning legislative action is in violation of the goals and requirements of the GMA, regardless of whether the local government has chosen to adopt the legislation pursuant to the GMA, as long as there is a sufficient nexus between the action and the GMA. *Rosewood v. Friday Harbor* 96-2-0020 (MO 12-6-96)

Where the record demonstrated that the intent of an ordinance was to protect a water supply and not necessarily to prohibit development, a GMHB did not have jurisdiction to rule on the challenge under the GMA. *Rosewood v. Friday Harbor* 96-2-0020 (MO 12-6-96)

A GMHB does not have jurisdiction to review permitting decisions under the 1995 amendment to RCW 36.70A.030(7). *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

A GMHB does not have jurisdiction to consider or make a ruling on what constitutes a vested permit or lot or what constitutes a pre-existing legal lot. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

A GMHB does have the authority to require aggregation of nonconforming lots. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

In 1996 the Legislature expanded the jurisdiction of a GMHB to include review of adoption of SMPs or amendments thereto. *Seaview v. Pacific County* 96-2-0010 (FDO 10-22-96)

The provisions of RCW 36.70A.370 prevent a GMHB from having jurisdiction over a challenge to the action of a local government under that section. Dismissal is the result. *Rosewood v. Friday Harbor* 96-2-0020 (MO 10-2-96)

A review process for a previously adopted CAO for the purpose of ensuring consistency with a later adopted CP that resulted in readoption without substantive change did not grant jurisdiction to a GMHB to review the substance of the previously adopted CAO. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)

Whether a particular property is or is not vested must be determined in a forum other than a GMHB. *FOSC v. Skagit County* 95-2-0065 (CO 8-28-96)

A GMHB has jurisdiction to determine whether pre-existing non-GMA DRs are invalid. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

A GMHB has authority under RCW 36.70A.300(2) and .330(4) to modify a previous finding of invalidity. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

Where the record showed obvious noncompliance and invalidity in portions of the record supplied by the local government, a GMHB will not ignore such action during a compliance hearing. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Even though a local government adopted the "existing code" it was nonetheless a GMA action subject to review for compliance and/or invalidity. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

A GMHB has jurisdiction to review a subarea plan that by its terms was adopted pursuant to RCW 36.70A, even if it was also adopted pursuant to other planning legislation. *Beckstrom v. San Juan County* 95-2-0081 (FDO 1-3-96)

A pending appeal to the County Council of a hearing examiner's SEPA decision did not deprive a GMHB of jurisdiction to render a decision on SEPA under RCW 36.70A.280. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

The definition of CP found in RCW 36.70A.030 involves a requirement that it be adopted pursuant to the GMA. The definition of DR has no such limitation. At a compliance hearing if no previous order of invalidity has been entered a GMHB must consider whether such an order should then be imposed. Thus, a GMHB may impose invalidity on existing DRs regardless of whether they were adopted pursuant to GMA. *WEAN v. Island County* 95-2-0063 (CO 12-19-95)

Where no CP nor DR has been adopted and the deadlines established by the Legislature have passed, a GMHB has authority to invalidate portions of an existing zoning code adopted before the GMA became effective. *WEAN v. Island County* 95-2-0063 (CO 12-19-95)

A GMHB does not have jurisdiction to decide violations of statues other than RCW 36.70A. *Armstrong v. Clark County* 95-2-0082 (FDO 12-6-95)

A GMHB does not have the authority to impose regulations even under an invalidity finding. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

When reviewing a CP or DR that has obvious and glaring noncompliance, a GMHB will not overlook that feature based upon some hyper-technical legal analysis. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

ReESHB 1025 states that GMHB jurisdiction sections were to be "added to Chapter 36.70A RCW." Such direction leads to the inescapable conclusion that the Legislature intended limitation of a GMHB's jurisdiction to violations of goals and requirements of RCW 36.70A. *Armstrong v. Clark County* 95-2-0082 (FDO 12-6-95)

Allegations of lack of a compliance with RCW 19.27.097 dealing with potable water requirements are not within the jurisdiction of a GMHB. *Armstrong v. Clark County* 95-2-0082 (FDO 12-6-95)

Where the record demonstrated that a local government has taken action in large measure to comply with GMA, jurisdiction for review by a GMHB existed even though a local government adopted a later

resolution to declare the action was not taken under GMA. *Cedar Park v. Clallam County* 95-2-0080 (MO 11-16-95)

The failure of a local government to adopt all parts of its CP by the GMA deadline does not preclude GMHB review of the portions that have been adopted. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)

An ordinance which by its terms was adopted under the authority of the GMA, even though it was not submitted to CTED prior to adoption pursuant to RCW 36.70A.106(1)(a), invoked GMHB jurisdiction in spite of a subsequently adopted resolution that the ordinance was adopted under the authority of RCW 36.70 and not the GMA. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)

RCW 36.70A.280 provides that a PFR may be filed as soon as the local government takes formal action. The timeframe for a PFR continues for a period of 60 days after publication of the appropriate notice. The failure of the local government to comply with RCW 36.70A.106(1)(a) does not preclude GMHB review. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)

There is no jurisdiction for a GMHB to determine whether a constitutional taking has occurred. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

For DRs adopted in 1991, after a later adoption of a CP, the role of a GMHB is to determine whether such DRs are consistent with the CP. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A GMHB does not have jurisdiction to determine whether a federal statute has been violated. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A GMHB does not have jurisdiction to determine compliance with RCW 36.105.070. *CICC v. Island County* 95-2-0072 (MO 9-6-95)

RCW 36.70A.280(1)(a) provides three separate jurisdictional bases:

Whether a local government planning under the GMA, or the State, is in compliance with RCW 36.70A;

Whether a local government planning under the GMA, or the State, is in compliance with RCW 90.58 relating to SMPs or amendments thereto;

Whether a local government planning under the GMA, or the State, is in compliance with RCW 43.21C (SEPA) as it relates to CPs, DRs or amendments, adopted under either GMA or SMA.

CICC v. Island County 95-2-0072 (MO 9-6-95)

A GMHB has jurisdiction to determine if a land use planning legislative action complies with the GMA regardless of whether or not the local government has adopted the legislation pursuant to RCW 36.70A, as long as there is a sufficient nexus between the action and the GMA. *CICC v. Island County* 95-2-0072 (MO 9-6-95)

A transportation impact fee ordinance which could have some effect on the rate of development but placed no "controls" on development or land use activities does not meet the definition of a DR under RCW 36.70A.030(8). Therefore, a GMHB does not have jurisdiction to review an appeal of that ordinance. *Properties Four v. Olympia* 95-2-0069 (FDO 8-22-95)

A GMHB has jurisdiction over an issue challenging a local government's failure to comply with GMA deadlines. *WEAN v. Island County* 95-2-0063 (MO 6-1-95)

Where no timely appeal of a wetlands ordinance was taken, there is no jurisdiction for a GMHB to review that ordinance at the time of adoption of the CP except for consistency with the CP. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)

The requirements for implementing DRs formerly found in RCW 36.70A.120 are now found in .040(3). Once implementing DRs were adopted, a GMHB does not have jurisdiction over the previous interim resource land DRs. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)

A GMHB does have jurisdiction to review CP implementing DRs regarding RLs even if such regulations are verbatim readoptions of resource lands interim DRs. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)

Placing a PFR in the mail does not comply with the jurisdictional requirements that the PFR be filed within 60 days of publication. After 60 days from publication a GMHB is without jurisdiction to rule on the PFR. *Eaton v. Clark County* 95-2-0061 (MO 5-11-95)

A GMHB has jurisdiction to determine the consistency of a CP as it relates to the SMA. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)

A city's DNS for a sewer extension is not an issue within the jurisdiction of a GMHB under RCW 36.70A.280. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)

A GMHB has jurisdiction to rule on SEPA challenges that relate to a GMA action or nonaction. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)

A GMHB does not have jurisdiction to rule on standards, goals or requirements of federal statutes and/or constitutional provisions. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)

The adoption of CA DRs immediately grants jurisdiction for review of compliance with the GMA. If jurisdiction did not attach until completion of the CP or implementing DRs, review at that time would be limited to consistency under RCW 36.70A.060(3). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

CA DRs are independent of, and different than, CP implementing DRs and are reviewable after adoption even if a CP has not yet been adopted. RCW 36.70A.060(2). *CCNRC v. Clark County* 92-2-0001 (MO 9-9-92)

LAND CAPACITY ANALYSIS

While a CAO must be consistent with the CP, it does not specifically need to be analyzed for consistency with a land capacity analysis. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

The GMA requirement for an IUGA land capacity analysis does not shift the burden of proof to a local government but simply provides an analytic framework to determine whether to expand IUGAs beyond municipal boundaries. The burden of showing the framework was not used or that it was used in a way that did not comply with the GMA remains with a petitioner. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The GMA does not require a land capacity analysis for rural areas but does not allow existing and future conditions in rural areas to be ignored. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

An IUGA is initially established at the municipal boundary. Until a proper land capacity analysis, which includes a capital facilities and fiscal impact analysis, is completed the IUGA cannot be moved. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

While there is no precise requirement in the GMA to specifically identify locations of future industrial, commercial and/or residential growth, a general location of such urban growth must be included in a land capacity analysis. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

A land capacity analysis is a necessary prerequisite to establishing IUGAs. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

A land capacity analysis, an analysis of existing and future capital facilities and services, and fiscal impacts must be completed before an IUGA outside municipal boundaries may be established. The IUGA must be consistent with the goals and requirements of the GMA and the CPPs. Guidance as to the information required for such an analysis is found in WAC 365-195-335(3). *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

LAND USE ELEMENT

Where a city adopted its CP prior to the one adopted by the county and the city included conceptual analysis for a potential UGA outside of municipal limits, compliance with the GMA was achieved. *Eldridge v. Port Townsend* 96-2-0029 (FDO 2-5-97)

The land use element and any subarea plans adopted through it must be consistent with all other elements of the CP. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

LAND USE POWERS

The establishment of greenbelts and open spaces within municipal boundaries is a city responsibility. The GMA requirement to make such designation available to a county does not infringe upon the city's land use powers. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

LEGISLATIVE ENACTMENT

In adopting planning policies, the name or title of the legislative action is not critical. The important factors are whether the notice, public participation and petition to the GMA board provisions of the GMA apply to the policy under local law, not whether it was adopted by ordinance or resolution. *Olympic Environmental Council, et al. v. Jefferson County*, 01-2-0015 (CO, 12-4-02)

LEGISLATIVE INTENT

The role of a GMHB in interpreting the GMA is to give effect to legislative intent and avoid unlikely or absurd results. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)

A GMHB interprets the GMA to give effect to the intent of the Legislature and to avoid unlikely or absurd results. *Seaview v. Pacific County* 95-2-0076 (CO 2-6-97)

LEVEL OF SERVICE (LOS)

Compliance with the Act is achieved where a county develops LOS standards for rural and for urban water services and precludes extension of urban services into rural areas. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A city's change of methodology for the measurement of traffic in the establishment of new LOS standards did not significantly raise or lower the LOS standards. *Progress v. Vancouver* 99-2-0038 (FDO 5-22-00)

A change in LOS standards involving a different methodology of traffic measurement does not substantially increase nor lower the LOS standards and a DNS determination was not clearly erroneous. *Progress v. Vancouver* 99-2-0038 (FDO 5-22-00)

A new corridor-approach LOS standard discourages sprawl and encourages multi-modal transportation by avoiding costly intersection improvements that promote single occupancy vehicle use. *Progress v. Vancouver* 99-2-0038 (FDO 5-22-00)

A "less-than-ten-trip"exemption for requiring a transportation impact study would lead to an incomplete assessment of cumulative impacts on LOS and thus fails to comply with RCW 36.70A.070(6)(b). *Progress v. Vancouver* 99-2-0038 (FDO 5-22-00)

RCW 36.70A.020(12) imposes a requirement for local government to establish an objective baseline to determine minimum LOS standards for public facilities and services. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

RCW 36.70A.070(6)(e) directs the adoption of DRs that prohibit established LOS standards to decline below those designated in the CP. *TRG v. Oak Harbor* 96-2-0002 (MO 5-9-96)

Once a local government adopts concurrency policies, implementing DRs must be adopted that prohibit new development from causing previously established LOS standards to be violated. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The GMA requires that LOS standards be established by a local government but invest the local government with wide discretion as to the proper level. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Defining LOS standards as "allowed", "not allowed", "conditional", or "provisional" does not establish a definitive level and thus did not comply with the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (CO 12-14-94)

LOS is defined in WAC 365-195-210(12). LOS standards must be in place prior to the establishment of an IUGA outside municipal boundaries. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

LIMITED AREAS OF MORE INTENSIVE RURAL DEVELOPMENT (LAMIRDS) – *SEE* RURAL ELEMENTS 2. LAMIRDS

LOCALIZED ANALYSIS

In determining a rural density, statistical averaging of existing and projected average lot sizes has value primarily as a starting point for the analysis. Five-acre lots are often a guideline to showing a rural density, but are not a bright line determination. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

MAJOR INDUSTRIAL DEVELOPMENTS (MIDS)

Under RCW 36.70A.070(5)(e) a LAMIRD must not be used to permit a major industrial development or master plan resort in the rural area unless specifically permitted under the provision of .360 and .365. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

MARKET FACTOR

A change in a market factor analysis from what was agreed to in a CPP did not comply with the GMA and could not be used as a basis for a recision of invalidity. *Abenroth v. Skagit County* 97-2-0060 (MO 6-10-98)

The use of an urban reserve area without defined standards of conversion to an UGA, in conjunction with a large market factor, did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The use of a market factor in determining an UGA boundary complies with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

MASTER PLANNED RESORTS (MPRS)

Under RCW 36.70A.070(5)(e) a LAMIRD must not be used to permit a major industrial development or master plan resort in the rural area unless specifically permitted under the provision of .360 and .365. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

In order to be compliant with the Act the designation of an MPR under RCW 36.70A.360 must comply with the requirements of that section. There is no authority to apply a preliminary or provisional designation to an MPR until the requirements .360 are fulfilled. Under the record in this case there is no showing that the location is a setting of significant natural amenities. The failure to adhere to the requirements of the Act and purportedly apply a provisional designation to the MPR substantially interferes with Goals 1, 2 and 12 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

MEDIATION

After the appointment of a settlement conference officer the parties were able to reach agreement on five of the seven issues presented in the petition. *TRG v. Oak Harbor* 97-2-0061 (FDO 3-5-98)

Where a new forest resource ordinance had been adopted and all parties mediated their differences and supported a finding of compliance and a recision of invalidity, the previous determination of invalidity was rescinded. *OEC v. Jefferson County* 94-2-0017 (CO 6-4-97)

MINERAL RESOURCE LANDS - *SEE* NATURAL RESOURCE LANDS

MINIMUM GUIDELINES

Consistency between a CP and DRs and a SMP must be achieved immediately by a local government. The 24-month grace period set forth in RCW 90.58.060 relating to guidelines adopted by DOE does not apply to GMA adoptions by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

Although the GMA and accompanying regulations (WAC 365-190-080) use the term designation and classification interchangeably, classification is a sub-component of the overall designation scheme. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

WAC 365-190-080(5) recommends a variety of protections in DRs according to specific species and habitats. A local government must follow those guidelines absent justification to the contrary. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

A local government is required to designate forestlands not already characterized by urban growth that have long-term significance for commercial production of timber. A local government is required to consider the guidelines established by CTED. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

MOOTNESS

A PFR which challenges a CP amendment is not moot even if a concomitant rezone is granted by the City and is unchallenged by petitioners. *Larson v. Sequim* 01-2-0021 (MO 12-3-01)

When an IUGA ordinance dealing with restrictions on rural growth is superceded by an adopted CP, the issues in the case are not moot although they may well be addressed in a corresponding FDO in the CP process. Continued noncompliance and invalidity was found. *Smith v. Lewis County* 98-2-0011c (CO 7-13-00)

Where challenged DRs are superceded by new ordinances during the PFR process, a GMHB will issue a FDO without regard to the new ordinances. If noncompliance is found, a compliance hearing would quickly be held at the local government's request. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)

Where pre-GMA ordinances were being used at the time of the PFR, but a new GMA ordinance was adopted, the challenge to the pre-GMA ordinances was rendered moot. *Panesko v. Lewis County* 98-2-0004 (MO 6-12-98)

Where a CP was adopted, but was by its terms not effective until DRs were adopted and thereafter the local government repealed the initial adoption, the petitions challenging the CP were rendered moot and thus dismissed. *Ellis v. San Juan County* 97-2-0006 (FDO 6-19-97)

Where the Supreme Court has ruled that a CAO was not subject to a referendum and the referendum was therefore voided, a finding of noncompliance on the referendum is moot and will be withdrawn. *North Cascades v. Whatcom County* 94-2-0001 (MO 12-22-94)

Even if a subsequent adoption of an UGA has occurred and mootness of the IUGA challenges may be appropriate, if both petitioner and a county request a decision on the merits and the criteria of *DOE v. Adsit* 103 W.2d 698 (1985) are met, a decision on the merits will be rendered. *Mahr v. Thurston County* 94-2-0007 (FDO 11-30-94)

NATURAL RESOURCE LANDS (RLS)

1. In General

The use of a program involving innovative techniques to establish proper CA buffering within agricultural zones appropriately balances Goals 6, 8, 9, and 10. *Mitchell v. Skagit County* 01-2-0004c (FDO 8-6-01)

The allowance of transient rentals in designated RLs without any analysis of impacts of such transient rentals to assure that no incompatible uses adjacent to and within such RLs are created, does not comply with the Act and substantially interferes with Goal 8 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

DRs which allow fifteen percent residential subdivision, RV parks, boat launches, etc., parks, golf courses, restaurants and commercial services all in designated RL areas do not comply with the Act and substantially interferes with Goal 8 of the Act under recent Washington State Supreme Court cases. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A local government's duty with regard to initially adopted RLs is vastly different than that with regard to CAs. Under section .060(1) a local government must adopt DRs to assure conservation of RLs in the initial planning stages. Those DRs remain in effect until implementing DRs are adopted contemporaneous with or subsequent to a CP. RL designations and DRs must be adopted anew and therefore jurisdiction exists to review the local government's action even if the designations and DRs are unchanged. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A LAMIRD designation is for the rural element and no RL lands may be included. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

If a lot aggregation DR within an adjacent to RL lands is amended, the county must adopt other measures that prevent incompatible development and uses from encroaching on RLs and to encourage conservation of forest and agricultural lands. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

There are no differences of importance or priorities in RL lands in the Act. *Neighbors v. Skagit County* 00-2-0047c (FDO 2-6-01)

Even if the public participation remand requirements of RCW 36.70A.130(2)(b) apply to this situation of redesignation, the goals and requirements of the Act with regard to public participation were not complied with under this record. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

Current use in RL areas is not a determinative factor of the appropriateness of an RL designation. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

A complete exemption of ongoing agricultural activities does not comply with the Act. A local government must balance the goals and requirements of the Act for only those resource activities that occur within a designated RL area. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

Under RCW 36.70A.060(1) a County is required to readopt its RL designations and DRs in permanent form at the time of adoption of its CP. Jurisdiction thereafter exists for a GMHB to review both the RL designations and DRs in the CP even if adopted by reference, upon filing a proper PFR. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A provision which allows densities more intense than 1 du per 10 acres and allows "opt out" at the property owner's choice does not comply with GMA regarding RLs and substantially interferes with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A rural element must protect the rural character of the area by containing and controlling rural development, assuring visual compatibility, reducing low-density sprawl, protecting critical areas and surface water and ground water resources and protecting against conflicts with the use of designated RLs. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The prohibition found in RCW 36.70A.060 against interference with existing uses applies only to RLs and not to CAs. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

Where a Superior Court determines that no substantial evidence existed to support a county's prior RL designation, the proper issue at the subsequent compliance hearing is whether petitioners met their burden under the clearly erroneous standard to demonstrate that the new RL designations did not comply with the GMA, regardless of the correlation between the new designations and the designations reversed by the Superior Court. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

While elimination of nonconforming lots adjacent to RLs may be impossible because of prior vesting, under the record here the county must take some action to buffer and keep conversion pressure away from the RLs. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

An ordinance, adopted in response to a finding of noncompliance, that allowed smaller "urban sized" lots and reduced the buffer area for such "urban sized" lots in the rural areas and RLs did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

The readoption of RL designations in the CP process is subject to challenge by a PFR. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

Designation of RLs with an urban reserve area overlay for the post 20-year planning period complied with the GMA. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

Whether densities are characterized as "urban", "suburban" or "rural residential" they do not comply with the GMA when located in RLs. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

The requirements of RCW 36.70A.020(8), .040 and .060 are not optional; they are mandatory and not just interim requirements. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

The use of an urban reserve area instead of designation of the land as RL for planning for the post-2012 period did not comply with the GMA. If the land is RL it must be designated and conserved until a proper analysis demonstrates a needed different designation. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

Initial adoption of DRs for RLs are interim and remain in effect only until the adoption of implementing DRs for a CP under RCW 36.70A.060. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)

The GMA requires a type of stewardship protection of CAs and conservation of RLs. *Diehl v. Mason County* 95-2-0073 (CO 9-6-96)

The greatest threat to long-term productive RLs is nearby conflicting uses. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

RCW 36.70A.020(8) provides three prongs:

To maintain and enhance;
To encourage conservation; and,
To discourage incompatible uses.

WEAN v. Island County 95-2-0063 (CO 4-10-96)

The fact that a process for designations of RLs complied with the GMA is only the first determination. There is also substantive threshold of compliance that must be met. *Diehl v. Mason County* 95-2-0073 (RO 2-22-96)

Pre-existing zoning code provisions adopted by reference without a clear statement of how they support conservation of RLs were shown to be internally inconsistent, and thus could not be consistent with the GMA or CPPs. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

The sequencing of designating and conserving RLs prior to adopting IUGAs must be followed unless there are overriding reasons in the record not to do so. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

While rural lands may be the leftover meatloaf in the GMA refrigerator, they have very necessary and important functions including an important symbiotic relationship to provide necessary support of and buffering for RLs. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The term "long-term commercial significance" does not equate with having the sole income for a family generated by agricultural use on the property. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The identification of two specific classes of RL (agriculture and forest) in the GMA does not exclude a mixed designation of agri-forest lands. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A local government is not required to designate every parcel of land that has been placed within the current use taxation scheme of RCW 84.34. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A RL designation of a parcel of land placed within the current use taxation scheme of RCW 84.34 prevailed against an individual property owner's argument that the land was not RL because it was not currently in actual use. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The use of an urban reserve designation instead of a RL designation did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A previously adopted CAO is not "interim" since the GMA does not require adoption of new designations and DRs in the CP, as is the case with RLs. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Interim designations need to err on the side of over-inclusions, while CP designations involve a wider range of discretion and balancing of competing interests by local governments. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The requirement of RCW 36.70A.060 that local governments shall assure the use of lands adjacent to RLs not interfere with their continued use as RL, provides the basis to require adequate buffering between RLs and incompatible uses. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The DRs required to prohibit incompatible encroachments are designed to protect the RL from development and not to protect development from the RL. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The requirement of prohibiting incompatible use adjacent to RLs is not satisfied by plat notification, right to farm ordinances and minimum lot sizes. Additional mechanisms are needed to avoid the single most destructive reason for a loss of RLs: incompatible adjoining uses. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Interim DRs for RL are required to be adopted before September 1, 1991, under RCW 36.70A.060 and .170. Those DRs remain in effect only until the adoption of new DRs in conjunction with the CP. RCW 36.70A.040(3). *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)

A GMHB does have jurisdiction to review CP implementing DRs regarding RLs even if such regulations are verbatim readoptions of interim resource lands DRs. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)

The requirements for implementing DRs formerly found in RCW 36.70A.120 are now found in .040(3). Once implementing DRs were adopted, a GMHB does not have jurisdiction over the previous interim resource land DRs. *CCNRC v. Clark County* 95-2-0012 (MO 5-24-95)

The greatest threat to sustainability of economically viable commercial forestlands is incompatible adjacent uses. The failure to adopt DRs to minimize such external threats did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

RCW 36.70A.020(8) requires a county to maintain and enhance resource-based industries, encourage conservation of productive forestlands, and discourage incompatible uses. *Mahr v. Thurston County* 94-2-0007 (FDO 11-30-94)

The GMA sequence requirements of designation and conservation of RLs, designation and protection of CAs, adoption of CPPs, establishment of interim UGAs, adoption of a CP and DRs are not mandatory, but it would be extremely difficult for a local government to comply with the GMA if a different sequence of actions was used. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

RL regulations and CA regulations are treated differently in the GMA. RL regulations have a certain expiration date at the time of adoption of DRs for the CP. No such expiration date is found in the CAs DR section. *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94)

2. Designations

In reviewing a county's "de-designation" of natural resource lands (See *Forester Woods Homeowners Association v. King County*, CPSGMHB 01-3-0008), we start with the presumption of validity that would attach to any county legislative enactment, examine the record to ensure that it contains sufficient analysis that the appropriate GMA criteria are applied, and make our determination based upon the presumption of validity and the record under the clearly erroneous standard. Because of circumstances resulting from the county's de-designation, including creation of islands and failure to take into account previous designation criteria based on soils, tax classification, long-term management, and parcel size in general, we decline to rescind our previous finding of invalidity regarding these properties. *Town of Friday Harbor, et al., v San Juan County,* 99-2-0010c and *Michael Durland, et al., v. San Juan County*, 00-2-0062c (CO 3-28-02) (Order on Compliance and Invalidity Re: Resource Lands Redesignation)

The language of the GMA and the *Redmond Soccer Field* case require a county to honor a "conservation imperative." *Town of Friday Harbor, et al. v. San Juan County*, 99-2-0010c (CO 3-2-02)

A county may not include a requirement in its designation criteria that land may not be identified as agricultural resource land unless it is "currently devoted to agricultural activities." A development regulation such as this excludes areas capable of being used for agricultural production that are not currently engaged in agricultural activity from consideration. This criterion is in direct opposition to the Supreme Court holding in *Redmond* and does not comply with the Act. *Mudge, Panesko, Zieske, et al. v. Lewis County,* 01-2-0010c (CO 7-10-02) Also *Panesko v. Lewis County,* 00-2-0031c, *Butler v. Lewis County*, 99-2-0027c, and *Smith v. Lewis County*, 98-2-0011c (CO 7-10-02)

a. Agricultural

Under a managed riparian buffer provision in agricultural RL the concept is compliant but the necessary performance standards recommended by the scientific advisory panel and adopted by the county continues to be noncompliant until completion of that action is made. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

An exemption from CA protection for ongoing agriculture activities must be limited to lands designated as ARLs under RCW 36.70A.170. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

The inclusion of 263 acres of ARL within an ILB designation substantially interfered with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Agricultural lands that satisfy designation criteria may not be disqualified simply because the land is not currently in agricultural use. *Diehl v. Mason County* 95-2-0073 (RO 12-9-99)

The record failed to show that qualifying agricultural RLs that were not in current use were designated. Therefore, failure to designate such areas did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 8-19-99)

The record demonstrated that a previous SCS map, which pointed out unique soils in Mason County, was incorrect and that no unique soils exist. Therefore, exclusion of unique soils as a designation criterion complied with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 8-19-99)

Where the CP provided for an opportunity to challenge the original designation of a property during the first amendment cycle, a reclassification from agriculture to rural residential complies with the GMA where the evidence demonstrated that the property did not meet the original agricultural RL criteria. *Anacortes v. Skagit County* 99-2-0011 (FDO 6-28-99)

Under the GMA a local government must designate and conserve agricultural RLs and then take action to discourage incompatible uses. A county must not put the emphasis upon protection of the rural area from RL uses. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

An owner's current use and/or intent for future use is not a conclusive determination of whether land qualifies for agricultural RL designation. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

The case of *Redmond v. Growth Hearings Board* 136 Wn.2d. at 38 (1998) clarified the term "primarily devoted to" to be one where the designation was to be "area wide" in scope and did not require that the land be currently in agricultural production. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

The case of *Redmond v. Growth Hearings Board* 136 Wn.2d. at 38 (1998) clarified the term "long-term commercial significance for agricultural production" beginning at page 54 to include the definition found at RCW 36.70A.030(10) and WAC 365-190-050. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

Where the record demonstrated that the local government had used inappropriate criteria in failing to designate RLs and that the criteria that were used were used incorrectly, the petitioner sustained its burden of proving that the county action failed to comply with the GMA under the clearly erroneous standard. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

The failure to include a criterion of unique soils for consideration in designating agricultural lands, or a rationale contained in the record for the exclusion of unique soils as a designation criterion, violated WAC 365-190-050(2) and did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 12-18-98)

The exclusion of land from agricultural designation based solely on the lack of current use as agricultural land did not comply with the GMA under the authority of *Redmond v. Growth Hearings Board* 136 Wn.2d 38 (1998). *Diehl v. Mason County* 95-2-0073 (CO 12-18-98)

A county decision to not designate prime upland soils if artificially drained and to not designate parcels smaller than 40 acres and to exclude private forestland Grades IV and V from designation was within the discretion of the local government and complied with the GMA. *FOSC v. Skagit County* 95-2-0075 (CO 4-9-97)

A designation ordinance that required a minimum 40-acre parcel, but also allowed subdivision into two 20-acre parcels, was inconsistent with a criterion to eliminate 20-acre parcels for resource designation. One or the other must be changed to comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (CO 4-9-97)

A city cannot designate property as agriculture within its municipal boundaries unless the city has enacted a program for transfer or purchase of development rights under RCW 36.70A.060(4). *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

The failure of the local government to examine growing capacity, productivity, soil composition, proximity to population areas nor any data to show that current farmland failed to meet the criteria set forth in the GMA, did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 9-6-96)

The use of a criterion involving the necessity of the farmland to provide the "sole support for a family" in designating agricultural land did not comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

Where the record reflected evidence of existing farming, over 7,000 acres of prime soil and ongoing farming activities, the failure to designate any agricultural lands of long-term commercial significance did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

Agricultural lands of long-term commercial significance do not depend on the ability of the land to provide the entirety of an owner's income in order to qualify for such designation. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

The term "primarily devoted to" under RCW 36.70A.170 and WAC 365-190-050 and –060 involves classification for area-wide lands rather than specific individual parcel determinations. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Where a local government designated agricultural lands that included portions which were not in current agricultural uses, there was no violation of GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A local government must designate agricultural lands not already characterized by urban growth that have long-term significance for commercial production of food or other agricultural products. The GMA requires a county to maintain and enhance agricultural based industries, encourage the conservation of productive agricultural lands, and discourage incompatible uses. RCW 36.70A.020(8). *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

A local government is required to designate and conserve agricultural lands while going through the process of analysis and balancing for a CP and DRs. Failure to designate such agricultural lands did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

b. Forestry

The redesignation of an area to rural residential within a "sea of rural resource land" which was done because the rural resource land allowed certain activities, does not comply with the Act. A county may not permit certain activities in resource areas and then use the existence of those activities as a reason to redesignate resource areas to other categories. *FOSC v. Skagit County* 99-2-0016 (FDO 8-10-00)

A finding of compliance for Mason County in its designation of forest lands of long-term commercial significance was made in accordance with the decision in *Manke v. Diehl* 91 Wn. App. 793 (1998). *Diehl v. Mason County* 95-2-0073 (CO 2-18-00)

Under the record in this case, the county's determination that it had no forest RLs of long-term commercial significance complied with the GMA under *Manke v. Diehl* 91 Wn. App. 793 (1998). *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

The use of previously determined noncompliance criteria in a forestland designation was not cured by applying the same criteria to a DR. *Diehl v. Mason County* 95-2-0073 (CO 9-6-96)

A determination that only lands previously zoned forestry would be designated industrial forestland precluded designation of forestlands which met the criteria of GMA and thus did not comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

First establishing a desired outcome through mapping and then developing data and/or criteria to support that outcome did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

A criterion which made participation in the open space tax classification system a prerequisite for designation effectively left the designation decision to the landowner and thus did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

Excluding parcels under 5,000 acres for designation as commercial forestland did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

A designation that required a net yield of 25,000 board feet per year and allowed an owner to remove the forestry designation any time that criterion had not been reached did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

A criterion that disqualified RL designation, if it was within ½ mile from "suburban" lands, did not conserve RL and did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

The allowance of a transfer of development rights from commercial forest to rural forest, with no density limit or cap for a cluster development, did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

A clustering scheme which allowed 40% of the designated forestland area for conflicting uses did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

A local government is required to designate forestlands not already characterized by urban growth that have long-term significance for commercial production of timber. A local government is required to consider the guidelines established by CTED. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

The intent of the early (September 1, 1991) designation process was to conserve commercial forestlands while a local government completed its CP. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

The 1994 amendment to the definition of forestlands contained in RCW 36.70A.030(9) did not change the original intent of the GMA. The amendment does not allow a landowner's intentions nor the consideration of a higher value for conversion to be appropriate criteria for the designation of forestry land. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

A local government's methodology to reach a conclusion as to designation of forestlands and then establish criteria to support that conclusion did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

Adoption of criteria that encouraged rather than discouraged conflicting uses did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

The exclusion of class IV forestlands from designation was based on improper criteria and ignored abundant evidence contained in the record. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

c. Mineral

The GMA does not require exclusion of mineral land designations in excess of a 50-year mineral supply. *Neighbors v. Skagit County* 00-2-0047c (FDO 2-6-01)

The redesignation of properties formerly in rural reserve to a new designation of rural resource that involved a lack of application of a local government's own criteria and which was also inconsistent with the CP, failed to comply with the Act. *FOSC v. Skagit County* 99-2-0016 (FDO 8-10-00)

A record which does not show a mapping location specifically for mineral RLs, nor demonstrate the criteria upon which any designations were made does not comply with the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The allowance of mining activity in rural areas did not violate the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

3. Development Regulations

a. Agricultural

Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

A DR that precludes densities more intense than 1 du per 10 acres for ARLs within FFAs complies with the Act. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

DRs which allow fifteen percent residential subdivision, RV parks, boat launches, etc., parks, golf courses, restaurants and commercial services all in designated RL areas do not comply with the Act and substantially interferes with Goal 8 of the Act under recent Washington State Supreme Court cases. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Where a previous order determined that the general buffer requirements were compliant and reflected BAS, and the question was whether the county appropriately balanced the goals and requirements of CA and RL areas, this record revealed the county had done an exhaustive job in evaluating BAS and determining local applicability to existing ongoing agricultural RL lands. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

A DR which allows non-agricultural uses in an agricultural RL and does not require such use to be temporary and does not prohibit leaching of toxins, does not comply with the GMA and the county's own agricultural conservation policies. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Where a DR allows a number of uses in RLs, which fail to comply with recent State Supreme Court decisions such uses fail to comply with the GMA. Requiring a special use permit does not remedy this failure to comply. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

If a lot aggregation DR within an adjacent to RL lands is amended, the county must adopt other measures that prevent incompatible development and uses from encroaching on RLs and to encourage conservation of forest and agricultural lands. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A DR which clarifies uncertain terminology and which adopts criteria to satisfy the GMA requirement that qualified ARLs not in current use be included in the designation, complies with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 12-4-00)

An exemption from CA protection for ongoing agriculture activities must be limited to lands designated as ARLs under RCW 36.70A.170. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

A 25-foot riparian buffer zone even if it is a managed, compact buffer zone for ongoing agricultural activities in a designated ALR was below the range of BAS as shown by the record. It did not fall within the range of peer tested BAS in the record. *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

Allowance of a 10-acre minimum lot size within agricultural RLs with the associated possibility of 1 du per 5 acre densities in some areas as part of a clustering program, complies with and does not substantially interfere with the goals of the GMA. *Diehl v. Mason County* 95-2-0073 (CO 8-19-99)

Use of a 50-foot buffer in rural lands and a 100-foot buffer in UGAs and rural lands of more intense development to segregate agricultural RLs from incompatible uses complies with the GMA. There is no specific GMA requirement for the minimum width of such buffers. *Diehl v. Mason County* 95-2-0073 (CO 8-19-99)

Under the record here, allowing densities more intense than 1 du per 5 acres surrounding RL designated areas substantially interferes with Goal 8 of the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

Allowing densities more intense than 1 du per 10 acres in agricultural RL and 1 du per 20 acres in designated forestry RL, under the record here, substantially interferes with Goal 8 of the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

Under the record in this case, where it is clear the county must reconsider certain parts of its rural agricultural designation for potential RL designation, invalidity will apply to those areas in the Rural-Ag designation which allow greater density than that allowed in the agricultural RL zone. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

An ordinance which allowed subdivision of agricultural lands into parcels smaller than 10 acres in conjunction with a finding by the county that acreage smaller than 10 acres could not be reasonably expected to have long-term commercial significance for agricultural use did not comply with the GMA. Additionally, such an ordinance substantially interfered with RCW 36.70A.020(8) and was declared invalid. *Diehl v. Mason County* 95-2-0073 (CO 12-18-98)

A DR which allowed 1 unit per 5-acre density within agricultural RLs did not comply with the GMA. Additionally, such ordinance substantially interfered with RCW 36.70A.020(8) and was declared invalid. *Diehl v. Mason County* 95-2-0073 (CO 12-18-98)

Buffer widths from 5 to 20 feet for lands adjacent to agricultural lands did not assure that such adjacent lands would not interfere with continued use of the RL and therefore did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 12-18-98)

The GMA gives protection to designated agriculture RLs from incompatible adjacent uses and brings into play the balancing act between GMA's goals for the conservation of agricultural industry and protection of CAs. The price paid for that deference is removal of development potential. *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

The Legislature has recently clarified the allowance of cluster development in agricultural lands. As long as the long-term viability of agriculture lands is not threatened by conflicting uses, clustering is an allowable option. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

In order to comply with the GMA a DR must have provisions to reserve the balance of a developed agricultural land for future long-term agricultural use rather than as a holding pattern for future sprawl. *Wells v. Whatcom County* 97-2-0030 (FDO 1-16-98)

RCW 36.70A.177 is a new section of the GMA and directs that in agricultural lands of long-term commercial significance innovative zoning techniques, including cluster zoning, are appropriate. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

A DR that exempted all existing agricultural activities from coverage did not comply with the GMA. *CCNRC v. Clark County* 96-2-0017 (CO 11-2-97)

The mere adoption of a pre-existing land use map and underlying residential densities within designated agricultural lands without a review for consistency did not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

The GMA requirement to conserve agricultural lands from conflicting uses requires a local government to find ways to protect such agricultural lands. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

An action designating agricultural lands of long-term significance but thereafter readopting underlying rural residential densities created an inherent conflict and did not satisfy the consistency requirement of the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

Allowance of 1 dwelling unit per 1 acre, 2.4 acre, and 4.8-acre densities in a designated agricultural zone did not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

The process of balancing goals at the CP stage cannot include abandoning the conservation of designated agricultural lands. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

One of the major reasons for the enactment of the GMA was to stop the conversion of RLs into sprawling low-density development. Densities within designated agricultural resource areas must not interfere with the primary use of the lands for production of food or other agricultural products or fiber. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

A county is required to adopt DRs on or before September 1, 1991, that assure the conservation of agricultural RLs previously designated. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

b. Forestry

DRs which allow fifteen percent residential subdivision, RV parks, boat launches, etc., parks, golf courses, restaurants and commercial services all in designated RL areas do not comply with the Act and substantially interferes with Goal 8 of the Act under recent Washington State Supreme Court cases. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Allowing densities more intense than 1 du per 10 acres in agricultural RL and 1 du per 20 acres in designated forestry RL, under the record here, substantially interferes with Goal 8 of the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

An ordinance which prohibited residential development in commercial forestry lots of larger that 40 acres, but allowed residential use of 1 unit per 20 acres in smaller lots did comply with the GMA. *Wells v. Whatcom County* 97-2-0030 (FDO 1-16-98)

A DR which did not act to significantly reduce the impact of incompatible encroachment upon the RL did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 9-6-96)

The use of a minimum 20-acre lot size in a forestry zone did not comply with the GMA requirement to preclude conflicting uses from RLs. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

The failure to include setbacks from lands adjacent to designated forestlands where a density of 1 dwelling unit per 2.5 acres was allowed did not preclude incompatible uses and thus did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (FDO 1-8-96)

Conservation of productive forestland is the paramount consideration for an interim resource land DR. Enhancement of potential economic value at the expense of conservation was not a legitimate goal and did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

c. Mineral

The language of RCW 36.70A.020(8) to maintain and enhance resource-based industries includes the mining industry. *Wells v. Whatcom County* 97-2-0030 (FDO 1-16-98)

RCW 36.70A.170(1)(c) requires mineral RLs designation where appropriate. With appropriate evidence and analysis, a local government was in compliance with the GMA when it determined that other goals and requirements of the GMA precluded the designation of mineral resources within 100-year floodplain throughout the county. *Storedahl v. Clark County* 96-2-0016 (CO 12-17-97)

Prohibitions against densities greater than 1 dwelling unit per 10 acres within ¼ mile of mineral RLs complied with the GMA. *FOSC v. Skagit County* 95-2-0075 (CO 7-14-97)

The designation of a minimum 5-acre lot as the only DR to protect mineral lands did not comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

The prohibition of mining within any 100-year floodplain that was based upon inadequate analysis contained in the record did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A DR that did not address incompatible use of lands adjacent to designated mineral lands did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

NONCOMPLIANCE

Applying reduced CA protections for ongoing agriculture in non RL designated areas, or restricted to only agricultural uses areas, based only upon the criteria of RCW 84.34, does not comply with the Act and substantially interferes with the goals of the Act. A process that involves reduction of CA protections for lots as small as one acre is not an allowable balancing of GMA goals. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

The record does not contain BAS to support an exemption of buffer protection for Type 5 streams of less than 500 feet. However, the county has carried its burden of showing the exemption no longer substantially interferes with the goals of the Act, and petitioners have carried their burden in showing the exemption does not comply with Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Reduction of distance from a GHA location that required geological reports and assessments, was not in conformance with BAS and did not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 7-13-01)

The allowance of transient rentals in designated RLs without any analysis of impacts of such transient rentals to assure that no incompatible uses adjacent to and within such RLs are created, does not comply with the Act and substantially interferes with Goal 8 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The designation of a LAMIRD involving 2-acre lot sizes is not an "intensive" rural development under RCW 36.70A.070(5)(d). Such a LAMIRD designation also substantially interferes with Goals 2 and 12 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The use of the term "interim" in a designation of UGA process where a county acknowledged that the designations were a "work in progress" did not relieve the county of the duty to comply with all the goals and requirements concerning UGAs before compliance with the GMA can be achieved. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The proper sizing of an UGA is not simply a density calculation. The community residential preference is not an appropriate criterion for sizing under RCW 36.70A.110. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

Administrative discretion must be accompanied by clear guidelines, consultation with resource agencies and a public hearing for issues involving FWHCAs, under the record in this case. *Diehl v. Mason County* 95-2-0073 (CO 3-14-01)

A DR adopted as an "emergency" without a public hearing makes it very difficult to show compliance with the Act. Under this record, hearings were held within sixty days but no permanent ordinance was adopted. The actions do not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A DR which allows any nonconforming use to convert to a different nonconforming use within the rural areas of the county does not comply with the Act and substantially interferes with Goals 1, 2, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Allowance of the same kinds of uses as those allowed in LAMIRDs for all other rural areas denominated as "rural development districts" does not comply with the Act and substantially interferes with Goals 1, 2, 10, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

DRs which substantially intensify the uses allowed in a LAMIRD beyond those in existence on July 1, 1993, for Lewis County do not comply with the Act and substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

In designating a LAMIRD the area and the uses must be in existence on July 1, 1993, for Lewis County and such area and uses must be minimized and contained. Failure to comply with these requirements under the record in this case also substantially interferes with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A county may make minor adjustments to an LOB to include undeveloped property. Such undeveloped property is to provide for "infill" and does not comply when it is used to include large undeveloped properties outside the areas existing as of July 1, 1993. A county must take into account the requirement of including adequate public facilities and services that do not permit low density sprawl all within the LOB. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl. Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A county does not comply with the rural character and visual compatibility requirements of the Act by simply declaring that what existed on the date it became subject to the Act and whatever development occurred thereafter is the county's definition of rural character. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A variety of rural densities required under .070(5) are not met by conclusionary undocumented statements regarding the effect of CAs. A uniform 1:5 density does not meet the requirements for reducing low-density sprawl, maintaining rural character, assuring visual compatibility, and containing rural development. Such a uniform density allows incompatible uses adjacent to RLs and reduced protection of CAs. Such action substantially interferes with Goals 1, 2, 8, and 10. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Where a local government makes substantial and significant changes to maps after the closing of the public hearings that is not resubmitted for public review, compliance with the Act under RCW 36.70A.035(2)(a) is not achieved. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Adoption of a map for "open space" at a scale that does not allow features to be accurately located, does not delineate future trails and parks and does not meet the GMA requirement of including lands that provide multiple use open space and separators between incompatible land uses, does not comply with the GMA. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

The failure to include any reference to the thirteen new LAMIRDs not previously designated within a supplemental FSEIS, fails to comply with SEPA requirements under GMA. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Under a managed riparian buffer provision in agricultural RL the concept is compliant but the necessary performance standards recommended by the scientific advisory panel and adopted by the county continues to be noncompliant until completion of that action is made. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

A DR which allows non-agricultural uses in an agricultural RL and does not require such use to be temporary and does not prohibit leaching of toxins, does not comply with the GMA and the county's own agricultural conservation policies. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Allowances under a rural signs DR that would allow signage to predominate over open space, natural landscape and vegetation does not comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A rural character definition which essentially says that whatever existed anywhere in the rural area on June 30, 1990 became the existing rural character of that particular county does not comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

In order to comply with the Act, a county must complete a compliant subarea plan before urban reserve development or other increases in density are allowed to occur under the record in this case. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A shift of an urban commercial industrial lands allocation to non-urban areas under the record in this case does not comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

CPPs may not conflict with GMA goals. Amending a CPP may not be used as justification for failure to comply with the Act. Where a framework analysis is provided and establishes the procedure to amend a county CPP's, the procedure must be followed in order to comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

In establishing an LOB under .070(5)(d)(iv) the county is required to clearly identify and contain the area, which must be delineated predominately by the built environment but may include limited undeveloped lands. The built environment includes those facilities which are manmade, whether they are above or below ground. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

A complete exemption of ongoing agricultural activities does not comply with the Act. A local government must balance the goals and requirements of the Act for only those resource activities that occur within a designated RL area. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

RCW 36.70A.110(4) does not allow a county to extend a 4-inch sewer line when the county has not shown that the extension is "necessary to protect public health and safety and the environment". The record only demonstrated that a "betterment of health and/or environment" would be obtained. *Cooper Point v. Thurston County* 00-2-0003 (FDO 7-26-00)

When an IUGA ordinance dealing with restrictions on rural growth is superceded by an adopted CP, the issues in the case are not moot although they may well be addressed in a corresponding FDO in the CP process. Continued noncompliance and invalidity was found. *Smith v. Lewis County* 98-2-0011c (CO 7-13-00)

The public participation goals and requirements of the GMA impose a duty on a local government to provide effective notice and early and continuous public participation. Under the record in this case that duty was not discharged. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Under RCW 36.70A.140 a local government is required to adopt a public participation program. The failure to do so does not comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A record which does not show a mapping location specifically for mineral RLs, nor demonstrate the criteria upon which any designations were made does not comply with the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A provision which allows densities more intense than 1 du per 10 acres and allows "opt out" at the property owner's choice does not comply with GMA regarding RLs and substantially interferes with Goal 8 of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Ambiguous and nondirective CP policies that fail to encourage development in urban areas or reduce sprawl and maps that are generalized and in many cases inaccurate in the designation of UGAs, did not comply with the Act. A CP must include objectives, principles and standards that are directive. DRs are to be consistent with and implement the CP and may not be used as a mechanism to automatically amend the CP or render it meaningless. Under the record in this case petitioner's burden of showing substantial interference with the goals of the Act has been satisfied. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County CP must identify open space corridors within and between UGAs and encourage the retention of open space and recreational opportunities. A CP which contains no analysis of existing and future needs nor identification of locations of open spaces or open space corridors and no text regarding policies encouraging and retaining recreational and open space opportunities does not comply with the Act. It was not compliant with the Act for the County to circumvent the CP and merely adopt DRs to fulfill this requirement. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A CP which designates 10 small town LAMIRDs, 7 crossroads commercial LAMIRDs, rural freeway interchange commercial areas on every freeway interchange in the County, 2 industrial LAMIRDs involving 357 acres and 920 acres, 5 lake area and 4 regular area shoreline LAMIRDs, a "floating" LAMIRD for tourist services and 12 suburban enclaves which consist of "preexisting non-rural development" does not comply with the Act and substantially interferes with the goals of the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County is not allowed to adopt an undefined, unmapped corridor-approach to transportation LOS measurement for purposes of concurrency which demonstrates no deficiencies while at the same time adopt a totally different methodology for funding applications which demonstrate significant transportation deficiencies, under the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County may not adopt such ambiguous standards to totally avoid concurrency requirements. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County is required to review drainage, flooding and stormwater run-off in its own area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute the waters of the state. The analysis must be included in a CP in order to comply with the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Where the City did not make a threshold determination prior to adopting a particular fire protection amendment to the CFP of the CP, SEPA has not been complied with and thus the City has failed to comply with the GMA. *Achen v. Battleground* 99-2-0040 (FDO 5-16-00)

A local government that ignores BAS recommendations from agencies with expertise, applies BAS for healthy streams to degraded ones and precludes the timely submission of agency BAS recommendations does not comply with the Act. *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

Where the subarea plan directs that a specific location is most suitable for light industrial growth, a DR that does not implement the subarea plan policy but rather allows unlimited commercial activity in the location, does not comply with the Act. Because of the small area delineated and the rapidly expanding nature of commercial development without any effective controls, substantial interference with Goals 5 and 11 are found. *Birchwood v. Whatcom County* 99-2-0033 (FDO 2-16-00)

Where an area is in an UGA but still under County jurisdiction, a County must use a joint and collaborative planning process under RCW 36.70A.210 and .020(11) rather than treat the City as "just another critic." *Birchwood v. Whatcom County* 99-2-0033 (FDO 2-16-00)

After a finding of noncompliance a local government must take action to comply with the GMA, regardless of whether a citizen challenges the action or inaction during the county's compliance process. *ICCGMC v. Island County* 98-2-0023 (CO 11-23-99)

The adoption of limited interim DRs at the time of CP adoption until a "full set" of DRs can be adopted, does not fully implement the CP and does not comply with the GMA. *Panesko v. Lewis County* 98-2-0004 (CO 11-16-99)

A noncompliant SEPA DNS will be remanded to the local government. A GMHB has no authority to order the creation of an EIS. *Willapa v. Pacific County* 99-2-0019 (FDO 10-28-99)

The concept of a demonstration wetlands bank involves both creation and distribution functions. Creation of a new wetland, under the record here, did not have any probable significant adverse effect. A non-conditioned DNS for the distribution of banking credits for the newly created wetland satisfies the clearly erroneous test and does not comply. *Willapa v. Pacific County* 99-2-0019 (FDO 10-28-99)

The record failed to show that qualifying agricultural RLs that were not in current use were designated. Therefore, failure to designate such areas did not comply with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 8-19-99)

The allowance of a guesthouse as an ADU to satisfy affordable housing requirements does not comply with the GMA in the absence of any analysis of existing conditions, projections of future guesthouse needs and the potential cost of public facilities and services. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

The establishment of villages, hamlets, and activity centers in rural areas that were based exclusively on existing conditions without any of the analysis required by RCW 36.70A.070(5)(d) does not comply with the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

An ordinance which does not clearly state that only recreational uses explicitly permitted by pre-GMA zoning and/or the GMA CP are allowed, does not comply with the GMA. *FOSC v. Skagit County* 98-2-0016 (FDO 5-13-99)

NONCONFORMING USES

Changes in nonconforming uses are compliant so long as the overall nature and intensity of the activity remains the same. *Yanisch, et al. v. Lewis County*, 02-2-0007c (FDO 12-11-02)

A DR which allows any nonconforming use to convert to a different nonconforming use within the rural areas of the county does not comply with the Act and substantially interferes with Goals 1, 2, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A county may not continue to include previously invalidated "large lots" in a RAID for the purpose of connectivity, without evidence in the record that such lots constitute logical outer boundaries. The fact that excluding the lots from the RAID would create nonconforming lots is not sufficient evidence to warrant recision of invalidity. *ICCGMC v. Island County* 98-2-0023 (CO 11-23-99)

While elimination of nonconforming lots adjacent to RLs may be impossible because of prior vesting, under the record here the county must take some action to buffer and keep conversion pressure away from the RLs. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

A GMHB does have the authority to require aggregation of nonconforming lots. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

The reduction of rear and side setbacks for dwellings within resource areas that increased the allowable uses of nonconforming lots did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

The fact that a RL designation made a particular parcel of property nonconforming did not violate the GMA. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

NOTICE

Under RCW 36.70A.035(1) "reasonable notice" is required even if many or all of the current petitioners attended the meetings. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The notice of adoption required by RCW 36.70A.290(2) must be "effective" in order to satisfy the GMA and establish the 60-day cutoff period for appeals. *WEAN v. Island County* 97-2-0064 (FDO 6-3-98)

Where an ordinance is not challenged within 60 days of publication of the notice of adoption, review is precluded. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

Where no notice of adoption has been published, a person with standing under RCW 36.70A.280(2) may file a petition challenging the action at any time until 60 days subsequent to the publication of the notice of adoption. *WEAN v. Island County* 97-2-0064 (FDO 6-3-98)

OFFICIAL NOTICE

A motion to supplement the record with, or take official notice of, new ordinances adopted late in the PFR process will be denied. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)

Since a GMHB can take official notice of growth management guidelines issued by CTED as well as the RCW and WAC provisions, there is no need to add proposed exhibits setting those items out. *Smith v. Lewis County* 98-2-0011 (MO 12-22-98)

OFM POPULATION PROJECTION

A CFP must use the same population projections used in other parts of a CP. Internal consistency requires all elements of a CP to be based upon the same planning period and the same population projections. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

The previous holding in *Port Townsend v. Jefferson County* concerning use of other than OFM population projections has been overruled by the change in legislation that required OFM to establish a range of projections rather than a discrete number. The outer limits of the OFM ranges are the minimum and maximum within which population projections must fall. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

Under the 1996 amendment, a local government is free to choose any population projection figure within the range established by OFM. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

Where a county government based its population projection on an adopted CPP and used that figure for the establishment of IUGAs, a subsequent staff reallocation, based on different projections that were not consistent with the CPPs and which had not received legislative approval from the county council, could not be used as a rationale for the sizing of IUGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Not only must all IUGAs be based upon a range of OFM projections they must all be based upon the same projections in order to comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The population allocation for urban areas plus the population allocations for non-urban areas must equal the total population projection. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A failure to use OFM population projections in the CP process did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The failure to include population increases that occurred after the OFM projection but prior to the adoption of the CP did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The OFM population projection must be used unless a county can show that a different projection is necessary. *Loomis v. Jefferson County* 95-2-0066 (FDO 9-6-95)

A population projection that was shown to be less accurate than the one provided by OFM did not comply with the GMA and could not be used as the basis for drawing IUGAs. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

The range of population projections found in the ESB 5876 amendment to RCW 43.62.035 had not been developed at the time of this case and therefore the statute did not apply. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

A county has the ultimate responsibility of determining population figures and urban growth boundaries. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

A deviation from the OFM population projections is possible if a county can clearly show a justification for that deviation. The decision must be based on evidence other than the mere fact that the numbers are different. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

The term "based upon" as used in GMA population projections may mean either that the OFM projection must be exclusively used or that the OFM projection is a foundation upon which a local government begins and builds its analysis. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

The OFM population projection must be used unless a local government can clearly show that it is inaccurate as applied to local conditions and that a different projection needs to be used in order to accomplish the goals and requirements of the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

OPEN SPACE/GREEN BELTS

Adoption of a map for "open space" at a scale that does not allow features to be accurately located, does not delineate future trails and parks and does not meet the GMA requirement of including lands that provide multiple use open space and separators between incompatible land uses, does not comply with the GMA. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Counties are required to identify "green belt and open space areas" within UGAs and to "identify open space corridors within and between" UGAs. Official maps, which do not show these areas fail to comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A County CP must identify open space corridors within and between UGAs and encourage the retention of open space and recreational opportunities. A CP which contains no analysis of existing and future needs nor identification of locations of open spaces or open space corridors and no text regarding policies encouraging and retaining recreational and open space opportunities does not comply with the Act. It was not compliant with the Act for the County to circumvent the CP and merely adopt DRs to fulfill this requirement. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Where a local government established a greenbelt area as one for special consideration status for the purpose of creating such an open space/greenbelt between two UGAs and the area was identified in a local government's parks and open space plan as an important corridor for public and private preservation, compliance with the GMA was achieved. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

Open spaces need to be identified and prioritized and delineated on a map. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

Where large size UGAs and a maximum population projection is adopted, an even more compelling need to identify open space corridors under RCW 36.70A.160 exists. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

Planned residential developments or other clustering schemes properly designed and limited in scope may protect sensitive areas, riparian trails and green space in rural areas. If properly used they can constitute a tool for preservation of sensitive lands and open space. The GMA encourages such use. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

RCW 36.70A.160 requires that an open space corridor be identified within and between UGAs. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Greenbelts and open spaces must be identified within an IUGA. The most common method of such identification is by mapping. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

The establishment of greenbelts and open spaces within municipal boundaries is a city responsibility. The GMA requirement to make such designation available to a county does not infringe upon the city's land use powers. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

PERFORMANCE STANDARDS

Under a managed riparian buffer provision in agricultural RL the concept is compliant but the necessary performance standards recommended by the scientific advisory panel and adopted by the county continues to be noncompliant until completion of that action is made. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

The purpose of a performance standard is to have an objective standard against which to compare an as yet unclassified object. Such a concrete standard provides predictability. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

CAs may be designated by performance standards. WAC 365-190-040(2)(d). *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

The designation of a CA should include a classification scheme and general location determination or performance standards for specific locations. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

The use of words "encourage" and "should" do not constitute performance standards *per se*. Standards are requirements or thresholds. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

PETITION FOR REVIEW (PFR)

1. Requirements

Issues not raised by a petitioner are prohibited from being addressed by a GMHB under RCW 36.70A.290(1). *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

Where noncompliance was based on a failure to act, a compliance hearing for a new ordinance involved facial good-faith evidence in the limited record which, when combined with the presumption of validity under RCW 36.70A.320, resulted in a compliance finding and a requirement for a PFR to challenge the new ordinance. *Panesko v. Lewis County* 98-2-0004 (MO 6-12-98)

In conjunction with the presumption of validity, the GMA requires that initial review of local government action or inaction must come through the filing of a petition at least until a determination of noncompliance has occurred. *WEAN v. Island County* 97-2-0064 (MO 2-23-98)

A GMA DR is presumed valid and even though questions arise as to whether an ordinance was adopted under GMA and whether publication was completed, such claims must be raised by means of a PFR. *WEAN v. Island County* 95-2-0063 (CO 10-6-97)

Where a new CP and DRs are adopted the proper vehicle to challenge that action is through a PFR. Such a determination will not be made in a recision of invalidity hearing. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)

Where parties were provided notice and an opportunity to participate in a compliance hearing but did not do so, then later filed a PFR involving claims that should have been raised during the compliance hearing process, those claims will be dismissed. *Wirch v. Clark County* 96-2-0035 (MO 1-29-97)

The GMA does not provide specific guidance to determine review within the scope of compliance hearings versus the necessity for a new PFR. *CCNRC v. Clark County* 96-2-0017 (MO 9-12-96)

Where an IUGA ordinance was finally adopted and contained significant differences to the boundary configuration than the pre-existing zoning ordinance, a new PFR rather than a compliance hearing was the appropriate vehicle to challenge the IUGA provisions of the ordinance. *WEC v. Whatcom County* 94-2-0009 (MO 1-20-96)

The omission of a specific issue in a PFR that is later included in a prehearing order is sufficient to present the issue for decision by a GMHB under WAC 242-02-558. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

Ultimately a GMHB has discretion to decide whether a new PFR or a compliance hearing is a proper vehicle to review compliance with the GMA, even in a situation where the local government has previously failed to act. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

RCW 36.70A.280 provides that a PFR may be filed as soon as the local government takes formal action. The timeframe for a PFR continues for a period of 60 days after publication of the appropriate notice. The failure of the local government to comply with RCW 36.70A.106(1)(a) does not preclude GMHB review. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)

The requirement to list the addresses of the petitioners in the PFR is not jurisdictional and failure to do so did not warrant dismissal. *Beckstrom v. San Juan County* 95-2-0081 (MO 10-30-95)

When a petitioner and local government agree that a remand is necessary and no review of the action by a GMHB occurred, any subsequent request for review must be by means of a PFR rather than a compliance hearing. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

2. Time for Filing

A petition that is not filed within the 60-day period after publication, as required by RCW 36.70A.290(2), will be dismissed. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

A PFR must be filed within 60 days after notice of publication is made. There is no provision in the GMA for any expansion of the 60-day filing period. *Schlatter v. Clark County* 95-2-0078 (MO 8-16-95)

Where the petition showed that it had been filed more than 60 days after notice was published, it was deemed to be frivolous under RCW 36.70A.290(3) and dismissed. *Schlatter v. Clark County* 95-2-0078 (8-16-95)

A PFR must be filed in the GMHB office within 60 days after publication. WAC 242-02-060 adopts the CR 6 methodology of counting days. Under WAC 242-02-240 filing means actual receipt in the GMHB office. *Eaton v. Clark County* 95-2-0061 (MO 5-11-95)

After 60 days from publication a GMHB is without jurisdiction to rule on the PFR. *Eaton v. Clark County* 95-2-0061 (MO 5-11-95)

The 60-day period for filing a PFR does not begin until publication of a notice of adoption. The physical presence of a petitioner when adoption occurred did not change the requirement for publication. *Moore-Clark v. La Conner* 94-2-0021 (FDO 5-11-95)

Whether the act of adoption is by resolution or by ordinance, the GMA requires publication of a notice of that adoption in order to start the 60-day clock for filing a PFR. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)

Under the facts of this case the doctrine of laches did not apply and a PFR was timely filed. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)

The 60-day limitation period for filing a PFR does not start until a notice of adoption has been published by the local government. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

A PFR must be filed within 60 days of publication of a notice of adoption. RCW 36.70A.290(2). *WSGA v. Whatcom County* 93-2-0001 (FDO 9-9-93)

3. Service

Where a local government did not demonstrate any prejudice from the failure to serve the PFR on it, a motion to dismiss was denied. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)

Under RCW 36.70A.280 and .290 there is no requirement that a PFR be served anywhere except at the appropriate GMHB office. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)

The GMA does not require that service of the PFR be made on the local government. WAC 242-02-230 provides a substantial compliance test and authorizes a GMHB total discretion in ruling on a motion to dismiss because of lack of proper service. *Kemper v. Clark County* 95-2-0044 (MO 5-9-95)

In order to dismiss a case for failure to properly serve the local government prejudice to the local government must have resulted from the failure to comply with WAC 242-02-230. *Kemper v. Clark County* 95-2-0044 (MO 5-9-95)

4. Amendments

Receipt of an amended PFR 11 days prior to the due date of petitioner's brief was rejected as untimely. *CMV v. Mount Vernon* 97-2-0063 (MO 3-13-98)

WAC 242-02 provides that amendments to a PFR may be filed as a matter of right within the first 30 days after the petition is received. Thereafter, approval of a GMHB is necessary. *CMV v. Mount Vernon* 97-2-0063 (MO 3-13-98)

WAC 242-02-260 allows amendment of a PFR, but such shall not be freely granted. A showing of hardship by a nonmoving party is sufficient grounds for denial. *TRG v. Oak Harbor* 96-2-0002 (MO 5-9-96)

5. Standing

There is no GMA requirement that a petitioner specifically set forth standing claims in the petition, especially where the record is clear that petitioner has participated under the GMA test. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96)

PRE-GMA

An ordinance which does not clearly state that only recreational uses explicitly permitted by pre-GMA zoning and/or the GMA CP are allowed, does not comply with the GMA. *FOSC v. Skagit County* 98-2-0016 (FDO 5-13-99)

With regard to the issue of whether pre-GMA regulations to satisfy GMA requirements were properly adopted, a GMHB will review the record to determine the type of notice that was given to the public, the amount of public participation that was involved, and the wording of the legislative action to readopt the regulations. *WEAN v. Island County* 97-2-0064 (FDO 6-3-98)

The mere adoption of a pre-existing land use map and underlying residential densities within designated agricultural lands without a review for consistency did not comply with the GMA. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

Simply listing non-GMA and pre-GMA statutes and regulations did not comply with the requirement to protect CAs. The record must reflect how such regulations and laws were sufficient to protect CAs and reflect that public participation requirements had been completed in order to comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (CO 9-12-96)

A GMHB has jurisdiction to determine whether pre-existing non-GMA DRs are invalid. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

Even though a local government adopted the "existing code" it was nonetheless a GMA action subject to review for compliance and/or invalidity. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Had the Legislature intended the new remedy created by new subsections of ESHB 1724 to apply only to DRs adopted under GMA, it could have used the same language "under this chapter" found in other sections of the GMA. *FOSC v. Skagit County* 95-2-0065 (CO 2-7-96)

A clear and definitive delineation of pre-existing ordinances to be relied upon and an analysis of how those ordinances conserve RLs is essential to comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

A determination that only lands previously zoned forestry would be designated industrial forest precluded designation of forestlands which met the criteria of GMA and thus did not comply. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

Pre-existing zoning code provisions adopted by reference without a clear statement of how they support conservation of RLs were shown to be internally inconsistent, and thus could not be consistent with the GMA or CPPs. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

In order to comply with the GMA the use of pre-GMA DRs must be explicit and must show that they are sufficient to protect CAs. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

Where no CP nor DR has been adopted and the deadlines established by the Legislature have passed, a GMHB has authority to invalidate portions of an existing zoning code adopted before the GMA became effective. *WEAN v. Island County* 95-2-0063 (CO 12-19-95)

The definition of CP found in RCW 36.70A.030 involves a requirement that it be adopted pursuant to the GMA. The definition of DR has no such limitation. At a compliance hearing if no previous order of invalidity has been entered a GMHB must consider whether such an order should then be imposed. Thus, a GMHB may impose invalidity on existing DRs regardless of whether they were adopted pursuant to GMA. *WEAN v. Island County* 95-2-0063 (CO 12-19-95)

Reliance on pre-GMA designations and regulations without public participation and new legislative action did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The use of pre-existing ordinances as GMA compliance without a hearing and notice and without discussion did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Prior planning decisions that are not in compliance with the GMA cannot be used as the basis for future planning decisions. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

The GMA does not allow existing zoning to be the sole criterion upon which to base an IUGA. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

Failure to prohibit new urban commercial and industrial growth outside of an IUGA from existing zones did not comply with the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (CO 12-14-94)

PREHEARING ORDER

The issues set forth in the prehearing order controls all further proceedings. A party is required to object in writing within seven days to contest the prehearing order issues. WAC 242-02-558. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

WAC 242-02-558 provides that an objection to any issue contained in the prehearing order must be made in writing within seven days. The prehearing order controls subsequent proceedings unless modified for good cause. *TRG v. Oak Harbor* 96-2-0002 (MO 5-9-96)

PRESUMPTION OF VALIDITY

The legislative action taken by a local government is presumed valid upon adoption. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. *CCARE v. Anacortes* 01-2-0019 (FDO 12-12-01)

Ordinance amendments made in response to a finding of noncompliance are presumed valid. RCW 36.70A.320. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. RCW 36.70A.320. *ICCGMC v. Island County* 98-2-0023c (CO 11-26-01)

Where a local government has taken legislative action in response to a remand the presumption of validity applies. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

Where there is no legislative action taken in response to a finding of noncompliance there is no presumption of validity to apply. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

Where a new ordinance adopted in response to a finding of noncompliance merely "confirms" the original ordinance, the presumption of validity applies, although logic would dictate a different result. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

A new CP and DRs constituting of several hundred pages, adopted after years of public participation with an index list of over 170 items, will not be reviewed other than facially within the 45-day limitations under a motion to rescind invalidity. Such local government actions are entitled to the presumption of validity and the new record must contain obvious evidence that the actions continue to substantially interfere with the goals of the GMA. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)

A CP is presumed valid and remains so until and unless the petitioner proves by a preponderance of the evidence that the CP did not comply with the GMA. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

Once a preponderance of evidence overcomes the presumption of validity the burden of coming forward shifts to the respondent. Such evidence must be shown in the record. *Diehl v. Mason County* 95-2-0073 (RO 2-22-96)

A FEIS does not carry a presumption of validity under RCW 36.70A.320. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

A presumption of validity can be overcome by the absence of evidence of proper consideration by the decision-maker, as shown or not shown by the record. *Mahr v. Thurston County* 94-2-0007 (FDO 11-30-94)

The presumption of validity applies to adoption of the land use element of a CP. However, as shown by WAC 365-195-050, it is necessary for the local government to adequately prepare and furnish a complete record containing appropriate analysis. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

Once a preponderance of evidence overcomes the presumption of validity, the burden of coming forward shifts to the respondent. Such evidence must be shown in the record. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

All GMA DRs are presumed valid upon adoption. Such a presumption presents an interesting dichotomy with the burden of proof established at the preponderance level. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

PROCEDURAL CRITERIA

Implementing DRs are distinct from consistency DRs. Implementing DRs are defined at WAC 365-195-800. There must not only be a lack of conflict but the regulations must be of sufficient scope to carry out fully the goals, policies, standards and directions contained in the CP. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

The consistency required between DRs and the CP means that no feature of the plan or regulation is incompatible with any other feature of a plan or regulation. WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

There is both a requirement of internal consistency within a CP, WAC 365-195-500, and of consistency between DRs and the CP as defined in WAC 365-195-210. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

The adoption of WAC 365-195 was done to assist counties and cities in complying with the GMA. The WAC only made recommendations which a GMHB must consider in making its decision. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)

PROPERTY RIGHTS

Under the record in this case, the County appropriately considered property rights under Goal 6. *Mitchell v. Skagit County* 01-2-0004c (FDO 6-8-01)

A claim of petitioners who were owners of improved property that the allowance of RVs on unimproved properties interfered with Goal 6 was not the type of "property right" intended by the Legislature to be encompassed by Goal 6. *PRRVA v. Whatcom County* 00-2-0052 (FDO 4-6-01)

The term "arbitrary and discriminatory actions" in Goal 6 involves the protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action. *PRRVA v. Whatcom County* 00-2-0052 (FDO 4-6-01)

Vested rights do not constitute a "built environment" under RCW 36.70A.070(5)(d)(i). *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

A petitioner's concern about a local government's hearing examiner system and the reluctance to incur the expense of a court appeal was beyond the scope of review authorized to a GMHB by the Legislature and did not constitute a violation of Goal 6. *Evaline v. Lewis County* 00-2-0007 (FDO 7-20-00)

The "takings" prong of RCW 36.70A.020(6) was satisfied where adequate consideration was given during the decision-making process. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

A designation ordinance that required a minimum 40-acre parcel, but also allowed subdivision into two 20-acre parcels, was inconsistent with a criterion to eliminate 20-acre parcels for resource designation. One or the other must be changed to comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (CO 4-9-97)

A local government must protect private property rights but also has the responsibility to protect CAs. There is no property right to provide false or incorrect information. *FOSC v. Skagit County* 96-2-0025 (FDO 1-3-97)

It is appropriate to consider property rights issues but not to the point of disregarding all other goals and requirements of the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Whether a particular property is or is not vested must be determined in a forum other than a GMHB. *FOSC v. Skagit County* 95-2-0065 (CO 8-28-96)

A local government has the right to prioritize and emphasize the goals of the GMA. A local government does not have the right to disregard 12 of the goals and focus entirely on the property rights goal. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

There is no property right to subdivide rural areas at urban densities in the absence of prior vesting. *FOSC v. Skagit County* 95-2-0065 (CO 2-7-96)

The role of a GMHB under the takings provision of Goal 6 is to ensure that the issue has been adequately considered by local government. *Beckstrom v. San Juan County* 95-2-0081 (FDO 1-3-96)

Whether private property has been unconstitutionally taken is an issue to be determined by courts and not by a GMHB. *Beckstrom v. San Juan County* 95-2-0081 (FDO 1-3-96)

RCW 36.70A.020(6) contains two separate and distinct goals: (1) takings and (2) protection of property from arbitrary and discriminatory actions. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The takings prong of Goal 6 is reviewed to determine if adequate consideration has been given by decision-makers. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

There is no jurisdiction for a GMHB to determine whether a constitutional taking has occurred. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Goal 6 involves a requirement of protection of a legally recognized right of a landowner from being singled out for unreasoned and ill-conceived action. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A local government's decision to not include any clustering in RLs, given the history of the past 15 years of clustering having the effect of reducing RLs, did not violate RCW 36.70A.020(6). *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

In order to be appropriately considered under the GMA, property rights must be ones that are vested and not merely speculative. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

PUBLICATION

Where no notice of adoption has been published, a person with standing under RCW 36.70A.280(2) may file a petition challenging the action at any time until 60 days subsequent to the publication of the notice of adoption. *WEAN v. Island County* 97-2-0064 (FDO 6-3-98)

The GMA establishes a jurisdictional statute of limitations of 60 days after publication as the cutoff for filing petitions. It is within the purview of the joint Boards to adopt a rule defining actual receipt of a petition for the establishment of the date of filing. *Weber v. Friday Harbor* 98-2-0003 (MO 4-16-98)

RCW 36.70A.280 provides that a PFR may be filed as soon as the local government takes formal action. The timeframe for a PFR continues for a period of 60 days after publication of the appropriate notice. The failure of the local government to comply with RCW 36.70A.106(1)(a) does not preclude GMHB review. *Cedar Parks v. Clallam County* 95-2-0080 (MO 11-15-95)

The failure of a local government to publish notice of adoption precludes the 60-day appeal limitation from starting. A formal publication rather than extensive newspaper coverage and general public knowledge must be made. *Diehl v. Mason County* 95-2-0073 (Amended MO 10-10-95)

A PFR must be filed within 60 days after notice of publication is made. There is no provision in the GMA for any expansion of the 60-day filing period. *Schlatter v. Clark County* 95-2-0078 (8-16-95)

After 60 days from publication a GMHB is without jurisdiction to rule on the PFR. *Eaton v. Clark County* 95-2-0061 (MO 5-11-95)

Regardless of whether a CP is adopted by ordinance or resolution, it is the act of publication of notice of that adoption that begins the 60-day time limitation for filing a PFR. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)

Whether the act of adoption is by resolution or by ordinance, the GMA requires publication of a notice of that adoption in order to start the 60-day clock for filing a PFR. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)

Where dual publications occur and there is no reference to the first publication in the second one, the second publication is the effective date for the commencement of the 60-day filing limitation. *Reading v. Thurston County* 94-2-0019 (MO 11-23-94)

A city's publication requirement is slightly different than that of a county. *Reading v. Thurston County* 94-2-0019 (MO 11-23-94)

Where a county published two separate times, but referenced the first publication date in both, the 60-day period commenced as the date of the first publication period. *Reading v. Thurston County* 94-2-0019 (MO 11-23-94)

Where a city and county adopted a unified CP and different notice-of-publication dates were used, the final publication date becomes the commencement date of the 60-day filing limitation period. *Reading v. Thurston County* 94-2-0019 (MO 11-23-94)

The 60-day limitation period for filing a PFR does not start until a notice of adoption has been published by the local government. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

PUBLIC FACILITIES AND SERVICES

An additional designation of municipal UGA areas that have existing sewer and water or that can be efficiently provided with the same, that are outside any floodplain designation and that impose a 1:5 lot size until the city completes a very detailed planning process complies with the Act. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

The provisions of RCW 36.70A.070(6)(b) and RCW 36.70A.020(12) establish the concurrency requirement of the Act. Under the record in this case, San Juan County complied with the Act because water and sewage hookups must be "in place" at the time "development occurs," despite acknowledged work to be done on appropriate LOS levels for UGAs and LAMIRDs. *Mudd v. San Juan County* 01-2-0006c (FDO 5-30-01)

A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such needs for infrastructure does not comply with the GMA, nor did the county properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The fact that water and sewer facilities are provided by non-county serving agencies does not relieve the county of including the budgets and/or plans in its analysis of the proper location of an UGA. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

Goal 1 of the Act allows and encourages expansion to take place in urban areas where public facilities can accommodate such growth at a lower cost and with less burden to taxpayers and to the natural environment. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Goal 12 of the GMA requires local governments to ensure that public facilities and services be adequate to serve the development at the time that it is available for occupancy, but does not require adequacy for densities beyond those existing at the time of availability so long as planning has been carried out that will ensure adequate public facilities and services for future denser occupancy. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Compliance with the Act is achieved where a county develops LOS standards for rural and for urban water services and precludes extension of urban services into rural areas. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A rural element must provide for a variety of rural density uses, EPFs and rural government services. Storm or sanitary sewers except as allowed for health reasons under RCW 36.70A.110(4) are not authorized. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

One of the fundamental purposes of a CP is to achieve transformance of local governance within the UGA such that cities are the primary providers of urban services. *Abenroth v. Skagit County* 97-2-0060 (FDO 9-23-98)

The fact that a public service and facilities provider also provides an urban LOS to others does not *ipso facto* make the facilities and service that are available to users outside the UGA an urban governmental service. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

Public facilities and public services are defined in RCW 36.70A.030. The definitions are broad and far-reaching and include both build-out concepts and provider services. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

Availability of public facilities does not in and of itself define an area as characterized by urban growth. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The GMA requires that new urban growth be served by urban public facilities and services whether they are provided by a public or private source. Public services and facilities means that all such services must be equitably available to all persons within an IUGA. *Loomis v. Jefferson County* 95-2-0066 (FDO 9-6-95)

An analysis of current and future data concerning public facilities and services is necessary prior to establishing an IUGA outside of municipal boundaries. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

PUBLIC PARTICIPATION

The requirement to have "interactive" dialogue does not mean that the GMA requires local government to respond to the various claims made by both proponents and opponents of a given legislative enactment. Where there has been "early and continuous" public participation and an adequate opportunity to participate in public hearings, there is no requirement that there be public discussion or expression of opinion immediately before the actual vote of the council. *Larson and Gasnick v. City of Sequim,* 01-2-0021 (FDO 2-07-02)

While it is difficult for a local government to comply with the public participation and requirements of the Act without a compliant public participation program, it is not impossible to do when specific locational decisions are made. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

Under the GMA, a County has an affirmative duty to dispense as much accurate information to as many people as it possibly can. Simply providing access does not satisfy that duty. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

A DR adopted as an "emergency" without a public hearing makes it very difficult to show compliance with the Act. Under this record, hearings were held within sixty days but no permanent ordinance was adopted. The actions do not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The legislative scheme of the Act with regard to .040 and .130 requires that DR amendments go through the same annual review process as CP amendments. An "automatic" amendment to DRs upon approval of a specific permit application does not comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

An ordinance which merely schedules the CP amendment processes does not comply with the requirements of RCW 36.70A.130. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Under RCW 36.70A.035(1) "reasonable notice" is required even if many or all of the current petitioners attended the meetings. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Where a local government makes substantial and significant changes to maps after the closing of the public hearings that is not resubmitted for public review, compliance with the Act under RCW 36.70A.035(2)(a) is not achieved. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Even if the public participation remand requirements of RCW 36.70A.130(2)(b) apply to this situation of redesignation, the goals and requirements of the Act with regard to public participation were not complied with under this record. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

A change in a designation involving more than 600 acres, without public participation under a County defined "mapping error" approach, failed to comply with the GMA. *OEC v. Jefferson County* 00-2-0019 (FDO 11-22-00)

The adoption of an amended DR denominated a memorandum of agreement, that occurred without any public participation except the noticing of the holding of a work session, does not comply with the GMA public participation goals and requirements. *Servais v Bellingham* 00-2-0020 (FDO 10-26-00)

Petitioner did not carry its burden of showing the county had failed to comply with the public participation goals and requirements of the GMA. The submission of three different drafts of an ordinance at different times was the type of participation and response a local government should engage in within the irerative process contemplated by the GMA. *Evaline v. Lewis County* 00-2-0007 (FDO 7-20-00)

A GMHB does not have jurisdiction to determine whether a violation of RCW 36.70 regarding notice and methods of ordinance adoption existed. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The public participation goals and requirements of the GMA impose a duty on a local government to provide effective notice and early and continuous public participation. Under the record in this case that duty was not discharged. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Under RCW 36.70A.140 a local government is required to adopt a public participation program. The failure to do so does not comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

An ILB first brought forth at a Planning Commission sub-committee meeting and included for the first time in a Planning Commission draft less than a month before final CP adoption by the BOCC did not comply with the public participation goals and requirements of the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Where the public was afforded ample opportunity to comment on the precise ordinance language ultimately adopted by the county and the county's public participation program did not preclude staff from accessing the BOCC and providing information after a vote has been taken, subsequent reconsideration and changes to the ordinance did not violate GMA. *Manville-Ailles v. Skagit County* 99-2-0015 (MO 12-29-99)

The role of a GMHB is in many respects an extension of the public participation theme of the GMA. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)

An acknowledged failure of public participation in adopting an ordinance directs that a finding of noncompliance and a remand be made without addressing the substance of the ordinance. Since the public participation issue disposes of the case, addressing the other issues would violate RCW 36.70A.290(1) concerning advisory opinions. *FOSC v. Skagit County* 98-2-0007 (CO 8-13-98)

Where an ordinance by its language demonstrated that it was not intended to fulfill the requirements of RCW 36.70A.140 directing that a local government provide a public participation program, it did not comply with the GMA. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

An ordinance which does not contain any public participation program, except for an opportunity to comment on permit applications, does not satisfy the requirements of RCW 36.70A.140. *CMV v. Mount Vernon* 98-2-0006 (FDO 7-23-98)

RCW 36.70A.140 states that errors in exact compliance with public participation requirements shall not be the basis for noncompliance if the spirit of the program and procedures is observed. Under the record in this case there was compliance with the GMA. *WEAN v. Island County* 97-2-0064 (FDO 6-3-98)

The GMA requires early and continuous public participation but does not require a specific methodology. The failure to directly mail notices to affected property owners during the latter part of the CP adoption process did not violate the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

The GMA requires that a public participation process be provided, but does not require that the local decision-maker agree with the positions urged by citizens. *Wells v. Whatcom County* 97-2-0030 (FDO 1-16-98)

RCW 36.70A.140 provides a local government with greater discretion to limit public participation "as appropriate and effective" in dealing with a response to a determination of invalidity. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

Where a focus group consisted of diverse members associated with a specialized scientific issue concerning fish and wildlife habitat areas, the meetings were open to the public, and further meetings by the planning commission and county commissioners did allow public participation, compliance with GMA was achieved. *CCNRC v. Clark County* 96-2-0017 (CO 11-2-97)

The GMA provides goals and requirements for "early and continuous" and "effective" public participation. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

While the GMA does not require local governments to notify all possible groups of a particular action under consideration, the specific involvement of particular groups on a particular project shown by this record makes early notification necessary in order to comply with the GMA. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

Where significant flaws in public participation are found, a GMHB will not address the substantive compliance issue of the ordinance in question. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

Simply listing non-GMA and pre-GMA statutes and regulations did not comply with the requirement to protect CAs. The record must reflect how such regulations and laws were sufficient to protect CAs and reflect that public participation requirements had been completed in order to comply with the GMA. *WEC v. Whatcom County* 95-2-0071 (CO 9-12-96)

Where the designation of an IUGA was raised for the first time during a work session on the day of the one and only public hearing that established the IUGA, the GMA requirement of effective public participation was violated. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

A DR that was never presented to the public before adoption and was substantially different from DRs previously presented at a public hearing did not comply with the GMA. *FOSC v. Skagit County* 95-2-0065 (CO 8-28-96)

The GMA requires that a local government provide an opportunity for early and continuous public participation but does not force citizens to attend nor require that they discuss any particular issue. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

The failure to comply with the requirements of RCW 36.70A.140 in adopting an ordinance in response to a determination of invalidity precludes consideration of recision. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

The release of documents and a revised staff report only days before the only hearing on adoption of a RLs DR did not comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

The fact that a petitioner participated in the process did not relieve a local government of the GMA duty to provide adequate notice. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

Adequate notice which includes availability of pertinent materials sufficiently in advance of a public hearing is required by the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

A clear and definitive delineation of pre-existing ordinances to be relied upon and an analysis of how those ordinances conserve RLs is essential to comply with the GMA. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

GMA mandates early and continuous public participation in the planning process but grants local governments wide latitude in designing a public participation process based upon local conditions. *Beckstrom v. San Juan County* 95-2-0081 (FDO 1-3-96)

A CAO adopted after only one public hearing, which did not involve any iterative process or consideration of scientifically-based evidence, did not comply with the GMA requirement of early and continuous public participation. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

The touchstone of the public participation goals and requirements of the GMA involve "early and continuous" public involvement. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A GMHB will review late changes to a CP to determine whether public participation has been violated because of a combination of the nature of the change and the timing of the change. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The mere fact that the BOCC reached a different decision than the one recommended by staff, planning commission and the citizens advisory committee did not *ipso facto* show a violation of public participation. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The use of pre-existing ordinances as GMA compliance without a hearing and notice and without discussion did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The effective notice requirement of RCW 36.70A.140 does not require a local government to directly mail notices to potentially affected property owners. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

In light of the record and the number of hearings that were held, a three-minute limitation for each speaker and other restrictions on oral presentation did not violate the GMA, where unlimited written submissions were allowed. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Eight months of planning commission meetings with virtually no opportunity for citizen participation did not comply with the spirit of RCW 36.70A.140. *WEAN v. Island County* 95-2-0063 (MO 6-1-95)

The public participation requirement of GMA is intended to ensure an open, clear, active and ongoing dialogue between citizens and their local governments. *WEAN v. Island County* 95-2-0063 (MO 6-1-95)

RCW 36.70A.140 requires, as part of the public participation process, that public meetings occur only after effective notice. A series of postponed or continued meetings and lack of specificity as to the nature of the discussion when the meeting was finally held did not comply with the GMA. *Moore-Clark v. La Conner* 94-2-0021 (FDO 5-11-95)

Where an earlier draft of a CP included items concerning road widening and construction and petitioner participated in commenting on those matters, there is no requirement in the GMA that a special notice be given to petitioner prior to adoption of the CP. *Reading v. Thurston County* 94-2-0019 (MO 12-22-94)

To comply with the public participation goals and requirements of GMA, the information used by a local government and submitted to the public and decision-makers must be reasonably complete and reliable. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

The GMA requires a dual process of public participation: iterative and interactive. *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94)

The goals and requirements of the GMA concerning public participation apply to all DRs. Review of challenges to public participation involves a review of the total record to determine if compliance with both the spirit of and strict adherence to RCW 36.70A.140 have been achieved. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

QUORUM

A board may not address issues brought before it in a petition for review and subsequent to a hearing on the merits unless it is able to achieve a quorum under RCW 36.70A.270(4). When only two Board members are present and they are unable to agree on any given issue, [T]the ordinance or plan under challenge is presumed valid upon its adoption, pursuant to RCW 36.70A.320(1). *Clean Water Alliance, et al. v Whatcom County*, 02-2-0002 (FDO 8-9-02)

RECONSIDERATION

In deciding whether to address a motion for reconsideration involving a "new" argument, one that is more precise and thorough than originally presented, may qualify. *PPF v. Clallam County* 00-2-0008 (RO 12-13-01)

On a motion for reconsideration, petitioners did not sustain their burden of proof. *PPF v. Clallam County* 00-2-0008 (RO 12-13-01)

The filing of a motion is deemed complete upon actual receipt at the Board's office. WAC 242-02-330(1). A responding party must ascertain the actual date of filing and either respond within ten days or request an extension to respond. *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)

A motion for reconsideration may not be filed after an order granting extension of time. That order does not qualify as a final decision under WAC 242-02-832(1). *Durland v. San Juan County* 00-2-0062c (MO 11-29-01)

Where a motion for reconsideration raises no new arguments that were not briefed and argued at the HOM, the motion will be denied. *FOSC v. Skagit County* 01-2-0002 (RO 7-9-01)

The due date for compliance begins at the time of the original order or upon issuance of an order on reconsideration, whichever occurs last. *Diehl v. Mason County* 95-2-0073 (MO 6-5-01)

When no new arguments are presented by a motion for reconsideration, it will be denied. *Anacortes v. Skagit County* 00-2-0049c (RO 3-5-01)

An issue neither briefed nor argued at the HOM may not be the basis of a motion for reconsideration. *PPF v. Clallam County* 00-2-0008 (RO 1-24-01)

A LAMIRD which combines commercial and industrial uses is a mixed use area and is not subject to the exemption under .070(5)(d)(i) of industrial areas being freed from the requirement of being principally designed to serve existing and projected rural population. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)

The imposition of a determination of invalidity does not have any effect on previously vested rights. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

A one-acre property virtually filled with a community center building with no further opportunity for development and substantial interference with Goal 8 of the Act will result in a rescission of invalidity. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

Current use in RL areas is not a determinative factor of the appropriateness of an RL designation. *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

The provisions of WAC 242-02-832 control the criteria for determining motion for reconsideration. *ICCGMC v. Island County* 98-2-0023 (RO 11-20-00)

The reconsideration rules provision of WAC 242-02-832 does not authorize the filing of a reply brief to a response to the motion for reconsideration. Each side gets one opportunity to set forth arguments on reconsideration. The reply brief will be stricken. *Servais v. Bellingham* 00-2-0020 (RO 11-20-00)

An exhibit that was listed in the index but was not submitted for the HOM is not part of the record and will not be considered on a reconsideration motion. *Servais v. Bellingham* 00-2-0020 (RO 11-20-00)

Where a county requests clarification of the scope of a finding of invalidity with a motion for reconsideration and demonstrates that a limitation of areas is consistent with the FDO, reconsideration

will be granted and invalidity will not apply to villages, hamlets, and activity centers. *Friday Harbor v. San Juan County* 99-2-0010 (RO 8-25-99)

Where no new argument is presented by a motion to reconsider, it will be denied. *ICCGMC v. Island County* 98-2-0023 (RO 7-8-99)

Where a reasonable person could be confused as to the scope of the order finding invalidity, a clarification excluding uses within the UGAs will be granted. *Abenroth v. Skagit County* 97-2-0060 (MO 6-7-99)

Where a county bases its motion for reconsideration on a misreading of the compliance order, the motion will be denied. *Abenroth v. Skagit County* 97-2-0060 (CO 3-29-99.

Where no new information is contained in the request for reconsideration that was not carefully considered in issuing the FDO, the reconsideration will be denied. *Abenroth v. Skagit County* 97-2-0060 (RO 10-30-98)

A petition for reconsideration of a FDO must be filed within 10 days of service of the order. WAC 242-02-832. *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)

Filing a motion for reconsideration of a FDO is not necessary to obtain judicial review. RCW 34.05.470(5). *Wells v. Whatcom County* 97-2-0030 (RO 7-2-98)

Letters requesting clarification are not motions for reconsideration and are not properly before the GMHB. *Wells v. Whatcom County* 97-2-0030 (RO 2-17-98)

Pursuant to WAC 242-02-832, parties have an option of whether to respond to motions for reconsideration unless the GMHB requires such a response. *Wells v. Whatcom County* 97-2-0030 (RO 2-17-98)

Under WAC 242-02-060, if no action is taken by the GMHB within 20 days of the request of the motion for reconsideration it is deemed denied. *Wells v. Whatcom County* 97-2-0030 (RO 2-17-98)

A decision regarding motions for reconsideration becomes the FDO for purposes of court appeal. *Wells v. Whatcom County* 97-2-0030 (RO 2-17-98)

Motions for reconsideration will be denied when they present no new arguments that were not previously considered in the original decision. *CCNRC v. Clark County* 96-2-0017 (RO 1-21-98)

Where no new arguments that were not considered in the original decision are presented, a motion for reconsideration will be denied. *CCNRC v. Clark County* 96-2-0017 (RO 1-21-98)

Where no new arguments were presented that were not considered in the original decision the motion for reconsideration will be denied. *Achen v. Clark County* 95-2-0067 (RO 1-20-98)

Failure to participate in the original hearing precludes availability of a reconsideration motion by such a party. *WEC v. Whatcom County* 94-2-0009 (RO 8-11-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (RO 8-11-97)

Where no appeal to court was taken from a FDO of noncompliance, a GMHB will not reverse that decision through a request for reconsideration of a compliance order entered some 13 months later. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

Where the FDO adequately addressed the issues presented in a motion for reconsideration, the motion will be denied. *Diehl v. Mason County* 95-2-0073 (RO 2-22-96)

WAC 242-02-830(2) requires that a motion for reconsideration must be filed within ten days of service of the FDO and thus a motion for reconsideration in a brief filed 15 days later is not timely. *Moore-Clark v. La Conner* 94-2-0021 (FDO 5-11-95)

A party is not allowed to submit previously available evidence for the first time on a motion for reconsideration. *Williams v. Whatcom County* 94-2-0013 (RO 11-9-94)

RECORD

Under the record in this case, the County included a wide range of science and appropriately included BAS in its decision. *Mitchell v. Skagit County* 01-2-0004c (FDO 8-6-01)

Tapes of a BOCC meeting which occurred approximately four months after adoption of an ordinance would not be necessary or of substantial assistance in reaching a Board decision. A motion to supplement the record is denied. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

As a general proposition requested supplemental evidence compiled after the decision of the local government has been made will not be permitted. Such supplemental evidence may occasionally be admitted for issues involving a request for invalidity. Supplemental evidence of materials available to the local government, often developed by the local government, but not included in the record of deliberations are often admitted. Newspaper articles are not admitted for supplemental evidence. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)

An exhibit that was listed in the index but was not submitted for the HOM is not part of the record and will not be considered on a reconsideration motion. *Servais v. Bellingham* 00-2-0020 (RO 11-20-00)

Where a local government moves to supplement the record with a scientific study on the day before the compliance hearing is held, post-hearing briefing on the issue of admissibility was allowed. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

A motion to supplement the record with, or take official notice of, new ordinances adopted late in the PFR process will be denied. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)

A county may not continue to include previously invalidated "large lots" in a RAID for the purpose of connectivity, without evidence in the record that such lots constitute logical outer boundaries. The fact that excluding the lots from the RAID would create nonconforming lots is not sufficient evidence to warrant recision of invalidity. *ICCGMC v. Island County* 98-2-0023 (CO 11-23-99)

Where a record fails to show why a previously invalidated area of land remained in the RAID, the local government's burden of proof is not met. *ICCGMC v. Island County* 98-2-0023 (CO 11-23-99)

The record demonstrated that a previous SCS map, which pointed out unique soils in Mason County, was incorrect and that no unique soils exist. Therefore, exclusion of unique soils as a designation criterion complied with the GMA. *Diehl v. Mason County* 95-2-0073 (CO 8-19-99)

The record contained no evidence that anadramous fish were given *any* consideration in the development of the FFA DRs. *Diehl v. Mason County* 95-2-0073 (CO 5-4-99)

A motion from petitioners to allow expert testimony was granted and the county was afforded an opportunity to call its own expert for testimony at the hearing. *Diehl v. Mason County* 95-2-0073 (CO 5-4-99)

The legislature resolved the concern with a local government being blindsided by a failure to raise a specific issue during the local government process by directing that a GMHB review be based on the record rather than *de novo*. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)

Since a GMHB can take official notice of growth management guidelines issued by CTED as well as the RCW and WAC provisions there is no need to add proposed exhibits setting those items out. *Smith v. Lewis County* 98-2-0011 (MO 12-22-98)

Evidence subsequent to the date of the action under challenge may be admitted for the purpose of consideration of an invalidity request but not for the purpose of determining compliance. *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

A GMHB decides each case individually based on local circumstances and the record provided. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

A party requesting supplemental evidence must convince a GMHB that such evidence is necessary or of substantial assistance in reaching the decision. RCW 36.70A.290(4). *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

The index and record as developed by the local government does not include items that are subsequent to the action under challenge. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

The absence of evidence in the record is often very persuasive in determining whether compliance has been achieved. Depositions designed to supply supplemental evidence would not be necessary nor of substantial assistance over what is or is not in the record. *Abenroth v. Skagit County* 97-2-0060 (MO 10-10-97)

The original and three copies of briefs and exhibits are required to be filed. WAC 242-02-570(2). *Diehl v. Mason County* 95-2-0073 (CO 9-18-97)

Failure to timely submit briefs and exhibits makes it difficult for a GMHB to carry out the requirements of the GMA for expeditious disposition of cases. *Diehl v. Mason County* 95-2-0073 (CO 9-18-97)

A motion to add 10 exhibits to the record will be denied when made 1 working day prior to a hearing, especially when allowing a 10-day response time would preclude a finding within 45 days for a local government's motion to rescind invalidity. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)

A GMHB will disallow proposed supplemental evidence except in rare occurrences. It is unfair to local government to have evidence admitted subsequent to the decision that is under challenge. The same rule

applies when a local government requests supplemental evidence to support its prior decision. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

A GMHB reviews the record thoroughly. A local government may not provide information in a record for support of its claims and then demand that a GMHB ignore portions of the record that are unfavorable. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Where discrepancies existed between the titles of maps and the titles in the index, the proposed exhibits were not necessary nor of substantial assistance in reaching a decision. *FOSC v. Skagit County* 95-2-0065 (MO 8-7-95)

Proposed affidavits and/or oral testimony concerning the adequacy of the FSEIS were not shown to be necessary nor of substantial assistance because the issue was sufficiently disclosed by the existing record. A motion to supplement the record was denied. *CCCU v. Clark County* 95-2-0010 (MO 7-19-95)

A request to supplement the record to include affidavits of expert witnesses and a county computer model which had not previously been published was denied because the request was not timely nor were the exhibits found to be necessary or of substantial assistance in making the decision. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

Rarely will supplemental evidence that could have been, but was not, submitted to the local government decision-maker be accepted for a GMHB hearing. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

Under the provisions of WAC 242-02-520(1) a local government is required to submit an index of the record within 30 days after the filing of a petition. The index is an exhaustive list of the record developed by the local government in reaching its decision. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

Under WAC 242-02-520(2), the actual exhibits to be used in a GMHB hearing are only those which are necessary for a full and fair determination of the issues. The purpose of this rule is to minimize the time-consuming preparation of the record by a local government. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

Exhibits which were part of the original record developed by the city or county, but not included in the original index list, are not supplemental evidence. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

The record is the source of evidence upon which a GHMB bases its decision about compliance or noncompliance. Regardless of who has the burden of proof and no matter how presumptively valid an action is, if the record does not contain evidence to refute valid challenges, the preponderance test will be met. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

The record is the source of evidence for a GMHB decision. If the record is incomplete or insufficient, the absence of evidence can be persuasive for carrying a burden of proof. *Mahr v. Thurston County* 94-2-0007 (FDO 11-30-94)

Unless there is a dispute as to accuracy and/or authenticity, the mechanism of providing the record is immaterial. *Mahr v. Thurston County* 94-2-0007 (FDO 11-30-94)

Under WAC 242-02-520, parties are required to carefully review the index of the record and submit *only* those documents reasonably necessary for determination of the issues presented. *Mahr v. Thurston County* 94-2-0007 (FDO 11-30-94)

The record consists of documents and evidence submitted to the local government during the process involved with the local government decision. It is not correct to request that the record be supplemented to provide such records to a GMHB. Such a request is properly denominated as additions to the initial index. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)

Supplemental or additional evidence is that which is beyond the record developed by a local government. Such a motion is rarely granted. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)

The FDO in this case was based upon the record established prior to and including the decision of the BOCC. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

Under WAC 365-195-050, -500 a local government has the responsibility of providing a record that demonstrates appropriate analysis of GMA goals and requirements and more than mere consideration of them. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

REGIONAL PLANNING

A County is required to review drainage, flooding and stormwater run-off in its own area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute the waters of the state. The analysis must be included in a CP in order to comply with the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A county has the responsibility under the GMA of providing for regional coordination and the sole responsibility for allocation of population projections. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

A county has the responsibility of being the regional coordinator for multi-jurisdiction GMA issues. *TRG v. Oak Harbor* 97-2-0061 (FDO 3-5-98)

A county has the responsibility to pull together all of the CFE information from other districts or agencies in its jurisdiction so that it can determine and make consistent the location, needs and costs of all capital facilities. It is the county's responsibility to make a regional analysis of all CFE needs, locations and costs so the public has an accurate assessment of what and where tax dollars are being spent, regardless of whether they go to the state, county or special districts. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

Because of regionality within the counties and cities of the WWGMHB jurisdiction, it is impossible to establish a standard average density per acre or other mathematical baseline to determine compliance with the GMA in the sizing or location of IUGAs. The establishment of a proper IUGA is not simply an accounting exercise. Cities and counties are afforded discretion under the GMA to make choices about accommodating growth. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Rural densities of 1 dwelling unit per acre are not absolutely prohibited, but would rarely comply with the goals and requirements of GMA. A reasonable and thorough analysis of the necessity for such densities is required before compliance can be achieved. Compliance decisions of a GMHB are based

upon the record of each case, and involve concepts of regionality and local decision-making. Therefore, no "bright line" density requirements can be established. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

The concept of regionality and local government decision-making are fundamental to the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

REMAND BY BOARD

The 1995 and 1997 amendments to the GMA give rise to an entirely different scenario with regard to the initial final decision and order finding of noncompliance than the situation in *Association of Rural Residents, v. Kitsap County,* 141 Wn.2d 185 (2000). While the local government is still under a duty to cure noncompliance, it is clear from the 1995 and 1997 amendments that a board retains jurisdiction and has the authority to extend the remand period until compliance is achieved. In any event, what is clear is that the Legislature has expressed its intent on at least two separate occasions (in 1995 and 1997) that a local government has the duty to comply with the Act and that duty continues beyond the initial remand period of the final decision and order. *Anacortes v. Skagit County,* 00-2-0049c (CO 1-31-02, pp. 9-10)

Under the GMA, the Board's authority to enter compliance orders is only triggered after the time period for compliance with a Board's final decision and order entered under RCW 36.70A.300(3)(b) has lapsed, or at an earlier time at the request of the county to lift invalidity. RCW 36.70A.330(1). *Swinomish Indian Tribal Community v. Skagit County,* 02-2-0009c (Order Denying Request for Two-Track Compliance Schedule 11-15-02, p. 7)

We find no authority in the Act to order the county to adopt any particular regulations to be in effect during the remand period. *Swinomish Indian Tribal Community v. Skagit County,* 02-2-0009c (Order Denying Request for Two-Track Compliance Schedule 11-15-02, p. 7)

The due date for compliance begins at the time of the original order or upon issuance of an order on reconsideration, whichever occurs last. *Diehl v. Mason County* 95-2-0073 (MO 6-5-01)

Where a county has requested review of ordinances within the context of a previous FDO remand, even though the appeal period has passed on the specific ordinances, review is taken with regard to whether or not a finding of compliance is warranted. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

RCW 36.70A.330(2) allows standing in a compliance hearing to any petitioner in the previous case, as well as any participant who has standing to challenge the legislation enacted in response to the FDO remand. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Under RCW 36.70A.280 and .330 a compliance hearing must relate to and is governed by the original issues set forth in the FDO, as well as any new issues arising from the actions taken by the local government during the remand period. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

The provisions of RCW 36.70A.130(2)(b) that allows a local government to suspend its public participation process "to resolve an appeal" of a GMHB hearing does not apply to changes in RL designations that were not part of the original FDO. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)

After Superior Court remand orders of April 4 and June 11, 1997, a GMHB remand hearing was held and a remand order entered August 11, 1997. The order provided that the matters set forth in the Superior Court appeal were remanded to the county to achieve compliance with earlier GMHB orders as modified by the Superior Court. Particularly in light of the 1997 amendments to RCW 36.70A.330, jurisdiction did exist under these circumstances for a GMHB to review the county's action in spite of an absence of a PFR challenge filed within 60 days of the notice of publication of such action. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

The remand of an UGA directs that all UGA determinations be re-evaluated by a county government. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

When a petitioner and local government agree that a remand is necessary and no review of the action by a GMHB occurred, any subsequent request for review must be by means of a PFR rather than a compliance hearing. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

REMAND BY COURT

After remand from a Court of Appeals decision and notice to the parties regarding the request for an extension or a progress report, when no party responded the case was considered abandoned and dismissed. *Wells v. Whatcom County* 00-2-0002 (MO 1-31-01)

A finding of compliance for Mason County in its designation of forest lands of long-term commercial significance was made in accordance with the decision in *Manke v. Diehl* 91 Wn. App. 793 (1998). *Diehl v. Mason County* 95-2-0073 (CO 2-18-00)

After Superior Court remand orders of April 4 and June 11, 1997, a GMHB remand hearing was held and a remand order entered August 11, 1997. The order provided that the matters set forth in the Superior Court appeal were remanded to the county to achieve compliance with earlier GMHB orders as modified by the Superior Court. Particularly in light of the 1997 amendments to RCW 36.70A.330, jurisdiction did exist under these circumstances for a GMHB to review the county's action in spite of an absence of a PFR challenge filed within 60 days of the notice of publication of such action. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

Where a Superior Court determines that no substantial evidence existed to support a county's prior RL designation, the proper issue at the subsequent compliance hearing is whether petitioners met their burden under the clearly erroneous standard to demonstrate that the new RL designations did not comply with the GMA, regardless of the correlation between the new designations and the designations reversed by the Superior Court. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

A superior court decision upheld the January 26, 1998, refusal to rescind invalidity where the county adopted criteria linked to GMHB orders. The court directed that recision of invalidity be granted for the 4 zones for which the county had established "procedural" criteria. Additional conditions from the Superior Court were imposed. *WEAN v. Island County* 95-2-0063 (MO 6-25-98)

Where the superior court remand was precise in its holding, a formal motion by a local government and a further hearing was not required prior to entry of an order rescinding invalidity. *WEAN v. Island County* 95-2-0063 (MO 6-25-98)

Where a superior court remand post-dated the 1997 amendments to the GMA, a GMHB will review the matter taking into account amendments that were made subsequent to the original action by the local government, particularly where no party objects to that procedure. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

Where a superior court reverses portions of the FDO, the matter is remanded to the local government to achieve compliance consistent with FDO as modified by the superior court. *Achen v. Clark County* 95-2-0067 (MO 8-11-97)

RESOURCE LANDS – *SEE* NATURAL RESOURCE LANDS

RURAL CENTERS

Where a county fails to follow its own CP policies and to do a .070(5) rural analysis for an expansion of a rural village designation, compliance with the GMA is not achieved. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

RCW 36.70A.110(4) does not allow a county to extend a 4-inch sewer line when the county has not shown that the extension is "necessary to protect public health and safety and the environment". The record only demonstrated that a "betterment of health and/or environment" would be obtained. *Cooper Point v. Thurston County* 00-2-0003 (FDO 7-26-00)

The designation of an area as a rural village recognizes existing rural development patterns in the surrounding rural areas, reduces converting undeveloped land into sprawling, low-density development and is harmonious with Goal 2. *Solberg v. Skagit County* 99-2-0039 (FDO 3-3-00)

Simply because a rural area has sewer and small lots does not mean it is required to be designated as an UGA. *Solberg v. Skagit County* 99-2-0039 (FDO 3-3-00)

The establishment of villages, hamlets, and activity centers in rural areas that were based exclusively on existing conditions without any of the analysis required by RCW 36.70A.070(5)(d) does not comply with the GMA. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

Substantial interference with the goals 1, 2, 8, 9, 10, 12, and 14 was found for allowance of lots less than 5-acre minimums in rural areas (including shoreline areas) which were outside designated villages, hamlets, or activity centers. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

Where the record showed compliance with RCW 36.70A.070(5) in designating rural centers because the county started at the correct beginning point, adopted appropriate criteria, and applied those criteria on a consistent basis and minimized and contained existing areas of more intense development, petitioner had not sustained its burden of showing the county's action was clearly erroneous. *Achen v. Clark County* 95-2-0067 (Poyfair Remand) (CO 5-11-99)

The GMA does not envision the creation of new small towns in rural areas at the IUGA stage of planning. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

The GMA requires that a county preclude sets of clusters of such magnitude that they will demand urban services. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

RCW 36.70A.070(5) requires that changes to existing rural areas be addressed at the CP stage. The GMA now provides for rural development of existing residential or mixed-use areas, intensification of developments on recreational or tourists lots, intensification of development on lots with isolated nonresidential uses, and minimization and containment of existing areas or uses of more intense rural development. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

Densities that are more intense that 1 du per 5 acres are not typically rural in character and exist in the rural environment, in the main, as part of AMIRDs. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

RCW 36.70A.070(5)(d)(iii) now allows commercial intensification of isolated small-scale businesses and cottage industries. Expansion of nonconforming uses within existing parcels does not necessarily fail to comply with the GMA. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

RCW 36.70A.070(5)(b) requires that the rural element "shall provide for a variety" of rural densities. Variegated densities are particularly appropriate in counties whose existing rural characteristics can accommodate such a variety of densities. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

The allowance of a range of uses including auction houses, auto sales, banks, bowling alleys, etc., in rural areas did not comply with the GMA. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

The delineation of lines tightly drawn around pre-existing built-up areas which allowed only limited infill for rural villages complies with the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

The GMA precludes rural centers from expansion beyond current development, except for infill. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

Activities permitted in rural centers must be dependent on a location in a rural area, functional and visual compatibility with that area, and limits in size and density to preclude need for future urban services. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

Infill of historical development patterns is allowable in rural centers as long as it is contained and does not create a new pattern of sprawl. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

RURAL DENSITIES

A county, in creating 194 new Limited Areas of More Intensive Rural Development (LAMIRDs) must clearly map those LAMIRDs in order to achieve compliance with RCW 36.70A.070(5). *Dawes v. Mason County*, 96-2-0023c (CO 8-14-02) (Compliance Order (For Compliance Hearing 7))

Where the county designates approximately 95,000 acres of rural lands as 1 dwelling unit per 5 acres, 105,000 acres as 1 dwelling unit per 10 acres, and 150,000 acres as 1 dwelling unit per 20 acreas, it has complied with the GMA requirement for a variety of rural densities. *Mudge, Panesko, Zieske, et al. v. Lewis County*, 01-2-0010c (CO 7-10-02) Also *Panesko v. Lewis County*, 00-2-0031c, *Butler v. Lewis County*, 99-2-0027c, and *Smith v. Lewis County*, 98-2-0011c (CO 7-10-02)

BAS in this record demonstrated that stream ecosystem impairment begins when the percentage of total impervious area reaches approximately 10 percent. A definition of minor new development which restricted the total footprint to 4,000 square feet and a total clearing area to 20,000 square feet removed substantial interference as to minor new development in Type 2, 3, and 4 waters. However, the county's

failure to reduce footprint and clearing areas for rural lots smaller than 5 acres still fail to comply with the Act. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

Where a 192 acre property meets some, but not all, of the CP criteria for designation of 1:20 and/or 1:10, a County is within its range of discretion to designate the entire property as 1:10 rural residential under the record in this case. *OEC v. Jefferson County* 00-2-0019 (CO 8-22-01)

A change in density of a particular area from 1 du per 0.5 acre to 1 du per 5 acre, does not have a probable adverse environmental impact and the County's SEPA actions are in compliance with the Act. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

A clustering ordinance which prohibits urban service standards, involves very limited numbers in sizing of clusters, requires affordable housing and applies only to limited areas outside of UGAs complies with the Act. RCW 36.70A.070(5)(b) authorizes a county to permit rural development through clustering to accommodate appropriate rural densities. The provisions of .070(5)(c) for containment, visual compatibility and reduction of low-density sprawl applies to such clusters. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A change in rural densities which reduces future developable acreage from 85,000 to 38, 000 under the unique facts and records in this case complies with the GMA. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A county has the duty to reduce the inappropriate conversion of *undeveloped* land (whether existing or allowable after GMA planning) into low-density development. RCW 36.70A.020(2) and .070(5)(c)(iii). *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

In determining a rural density, statistical averaging of existing and projected average lot sizes has value primarily as a starting point for the analysis. Five-acre lots are often a guideline to showing a rural density, but are not a bright line determination. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl. Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A variety of rural densities required under .070(5) are not met by conclusionary undocumented statements regarding the effect of CAs. A uniform 1:5 density does not meet the requirements for reducing low-density sprawl, maintaining rural character, assuring visual compatibility, and containing rural development. Such a uniform density allows incompatible uses adjacent to RLs and reduced protection of CAs. Such action substantially interferes with Goals 1, 2, 8, and 10. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The rural element of .070(5) is directed toward maintaining rural character and toward limiting, and containing any existing non-rural growth in rural areas. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

In order to comply with the Act, a county must complete a compliant subarea plan before urban reserve development or other increases in density are allowed to occur under the record in this case. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

An urban reserve designation of a remainder area from a cluster development that is implemented throughout the county and at the owner's discretion does not comply with the Act. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A shift of an urban commercial industrial lands allocation to non-urban areas under the record in this case does not comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)

Allowance of a second "guesthouse" as an ADU on every SFR lot in designated rural lands and/or RLs without any analysis of the density impact substantially interferes with the goals of the Act and is determined to be invalid. *Friday Harbor v. San Juan County* 99-2-0010c (MO 11-30-00)

A one unit to five acre density does not, *per se,* constitute low-density sprawl. *OEC v. Jefferson County* 00-2-0019 (FDO 11-22-00)

Where no large lots of rural land exists that can reasonably be restricted from a uniform 5 acre development, and where unique local circumstances exist, a uniform 5 acre development pattern does comply with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 10-12-00)

Extensive use of 1 du per 5 acre densities and allowance of even more intense densities in AMIRDs without the balance of lower 1 du per 10 acre and 1 du per 20 acre densities create high average densities that do not comply with RCW 36.70A.070(5) and .030(14). *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

Densities that are more intense that 1 du per 5 acres are not typically rural in character and exist in the rural environment, in the main, as part of AMIRDs. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

RCW 36.70A.070(5)(d)(iii) now allows commercial intensification of isolated small-scale businesses and cottage industries. Expansion of nonconforming uses within existing parcels does not necessarily fail to comply with the GMA. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

A CP which adopts a variety of rural densities of 1 du per 5 acres, 1 du per 10 acres and 1 du per 20 acres that allows creation of fewer than 1,000 new lots during the planning period fulfills the requirement of RCW 36.70A.070(5)(b) for a "variety of rural densities." *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

An ordinance which allowed lots as small as 12,500 square feet continued to allow non-rural densities in rural areas and thus did not comply with the GMA. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

The use of bonus densities along with failure to limit the number of clustering lots allows non-rural densities in rural areas at a magnitude that demands urban services. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

When an ordinance adopted in response to a determination of invalidity continued to allow non-rural densities in rural areas, and the local government failed to carry its burden of proving the elimination of substantial interference and petitioners proved noncompliance, a prior determination of invalidity will continue. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

While intensive rural development is now allowed by the GMA such development must be subject to minimization and containment. Such rural areas must include only appropriate rural uses not characterized by urban growth and must be consistent with a rural character. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

Where the record demonstrated that a greater variety of rural densities, a decrease in urban and rural sprawl and an increase in RL conservation would be achieved by a greater than 5-acre minimum lot size, maintaining a minimum 5-acre lot size throughout the county did not comply with the GMA and substantially interfered with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

A recognition of growth that will occur outside IUGAs due to preexisting lots in rural areas must not encourage growth in those areas but merely recognize its existence. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

A DR which allowed expansion of 1 and 2.5 acre minimum lot sizes in rural areas prior to adoption of RL designations and conservation and before an overdue CP was completed substantially interfered with the goals of the GMA. *FOSC v. Skagit County* 95-2-0065 (CO 8-28-96)

The requirement of RCW 36.70A.070(5) to provide for a variety of rural densities must involve densities that are rural and not urban. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Invalidity was found for rural densities more intense than 1 dwelling unit per 3 acres and above under the record in this case. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

The imposition of a 5-acre minimum lot size north of a designated "resource line" under the record in this case did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The absence of a cap on PUD clusters in addition to a relaxation of aggregation standards to allow 8,400 square foot minimum lot sizes outside of an IUGA did not comply with the GMA. *FOSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

Rural densities of 1 dwelling unit per acre are not absolutely prohibited, but would rarely comply with the goals and requirements of GMA. A reasonable and thorough analysis of the necessity for such densities is required before compliance can be achieved. Compliance decisions of a GMHB are based upon the record of each case, and involve concepts of regionality and local decision-making. Therefore, no "bright line" density requirements can be established. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

A rural density of 1 dwelling unit per acre without proper analysis and appropriate rationale did not comply with the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

RURAL ELEMENT

1. In General

A county which was given 90 days in the FDO to restrict the parameters for rural signage to protect rural character and after 230 days had still failed to do so, was found to be in substantial interference with the fulfillment of Goals 2 and 10 of the Act. *Evergreen Islands v. Skagit County*, 00-2-0046c (CO 1-31-02, p.21)

A county's rural area development regulations are not compliant if they allow subdivision resulting in densities greater than 1 dwelling unit in 5 acres. *Yanisch, et al. v. Lewis County,* 02-2-0007c (FDO 12-11-02)

A county's definition of rural character is noncompliant if it incorporates rural attitudes which give rise to land use regulations that do not conform to GMA goals and requirements. A county cannot exempt its rural residents from the requirements of the Act, even if doing so would reflect the wishes of those residents. A goal which states that residents of remote parts of the county are allowed to live as they choose, as long as they do not infringe upon the rights of neighboring property owners or cause environmental degradation, fails to harmonize with GMA goals. *Yanisch, et al. v. Lewis County,* 02-2-0007c (FDO 12-11-02)

A clustering ordinance which prohibits urban service standards, involves very limited numbers in sizing of clusters, requires affordable housing and applies only to limited areas outside of UGAs complies with the Act. RCW 36.70A.070(5)(b) authorizes a county to permit rural development through clustering to accommodate appropriate rural densities. The provisions of .070(5)(c) for containment, visual compatibility and reduction of low-density sprawl applies to such clusters. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The allowance of transient rentals in designated RLs without any analysis of impacts of such transient rentals to assure that no incompatible uses adjacent to and within such RLs are created, does not comply with the Act and substantially interferes with Goal 8 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The rural character requirements of RCW 36.70A.070(5)(b) and (c) as well as RCW 36.70A.030(14) involve more than just preservation of "natural" rural area. A county must assure that the "natural landscape" predominates, but also has a duty to foster "traditional rural lifestyles, rural based economies and opportunities" to live and work in the rural area. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A county has the duty to reduce the inappropriate conversion of *undeveloped* land (whether existing or allowable after GMA planning) into low-density development. RCW 36.70A.020(2) and .070(5)(c)(iii). *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

In determining a rural density, statistical averaging of existing and projected average lot sizes has value primarily as a starting point for the analysis. Five-acre lots are often a guideline to showing a rural density, but are not a bright line determination. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A DR which allows any nonconforming use to convert to a different nonconforming use within the rural areas of the county does not comply with the Act and substantially interferes with Goals 1, 2, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Allowance of the same kinds of uses as those allowed in LAMIRDs for all other rural areas denominated as "rural development districts" does not comply with the Act and substantially interferes with Goals 1, 2, 10, and 12. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A county does not comply with the rural character and visual compatibility requirements of the Act by simply declaring that what existed on the date it became subject to the Act and whatever development occurred thereafter is the county's definition of rural character. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A variety of rural densities required under .070(5) are not met by conclusionary undocumented statements regarding the effect of CAs. A uniform 1:5 density does not meet the requirements for reducing low-density sprawl, maintaining rural character, assuring visual compatibility, and containing rural development. Such a uniform density allows incompatible uses adjacent to RLs and reduced protection of CAs. Such action substantially interferes with Goals 1, 2, 8, and 10. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The rural element of .070(5) is directed toward maintaining rural character and toward limiting, and containing any existing non-rural growth in rural areas. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Where a county fails to follow its own CP policies and to do a .070(5) rural analysis for an expansion of a rural village designation, compliance with the GMA is not achieved. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Compliance with the Act is achieved where a county develops LOS standards for rural and for urban water services and precludes extension of urban services into rural areas. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Allowances under a rural signs DR that would allow signage to predominate over open space, natural landscape and vegetation does not comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A rural character definition which essentially says that whatever existed anywhere in the rural area on June 30, 1990 became the existing rural character of that particular county does not comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Under the record in this case, the commercial/industrial needs analysis and shift of urban commercial/industrial allocation to non-urban areas substantially interferes with Goals 1 and 2 of the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

The record demonstrates compliance with RCW 36.70A.070(5)(d)(iii) in establishing and designating cottage industry/small scale business areas. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)

Preexisting parcelization of surrounding lots provides no reason to perpetuate the past with continued reliance on consumptive land use patterns in the rural areas. *ICCGMC v. Island County* 98-2-0023 (CO 10-12-00)

Where no large lots of rural land exists that can reasonably be restricted from a uniform 5 acre development, and where unique local circumstances exist, a uniform 5 acre development pattern does comply with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 10-12-00)

The redesignation of an area to rural residential within a "sea of rural resource land" which was done because the rural resource land allowed certain activities, does not comply with the Act. A county may not permit certain activities in resource areas and then use the existence of those activities as a reason to redesignate resource areas to other categories. *FOSC v. Skagit County* 99-2-0016 (FDO 8-10-00)

Under the provisions of RCW 36.70A.110(4) prohibiting urban governmental services in rural areas except in limited circumstances the phrase "basic public health and safety and the environment" involves two components. "Basic public health and safety" involves a component that encompasses a variety of protections for human well-being. "The environment" relates to protections that are directly beneficial to flora and fauna, but usually only indirectly beneficial to human well-being. *Cooper Point v. Thurston County* 00-2-0003 (FDO 7-26-00)

In determining compliance with the rural element, a CP must only include lands that are not otherwise designated as UGAs and not otherwise designated as RLs. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The rural element of a CP involves areas where a variety of uses and residential densities are allowed. A variety of uses and densities are to be established at a level that is consistent with the preservation of rural character and the requirements of .070(5). *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Rural character is a pattern of use and development in which open space, natural landscape and vegetation predominate over the built environment. Rural character fosters traditional rural lifestyles in a rural based economy, provides an opportunity for rural visual landscape and is compatible with uses by wildlife and for FWHCA and that reduces inappropriate conversion of undeveloped land into sprawling low-density development. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A rural element must provide for a variety of rural density uses, EPFs and rural government services. Storm or sanitary sewers except as allowed for health reasons under RCW 36.70A.110(4) are not authorized. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A rural element must protect the rural character of the area by containing and controlling rural development, assuring visual compatibility, reducing low-density sprawl, protecting critical areas and surface water and ground water resources and protecting against conflicts with the use of designated NRLs. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The adoption of a uniform 1 dwelling per 5 acres in the rural areas does not satisfy the requirements of .070(5) and substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The allowance of unlimited clustering does not comply with the Act when its purpose is to assure greater densities in rural and resource areas and not to conserve RLs and open space. When allowable clustering results in urban, and not rural, growth it substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A one-time redesignation of rural lands to correct mapping errors and misapplication of designation criteria that was postponed to the first amendment cycle as promised in the CP, was not required to comply with ESB 6094, and did comply with the GMA. *FOSC v. Skagit County* 99-2-0016 (FDO 9-7-99)

Substantial interference with the goals 1, 2, 8, 9, 10, 12, and 14 was found for allowance of lots less than 5-acre minimums in rural areas (including shoreline areas) which were outside designated villages, hamlets, or activity centers. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

Except in extremely unusual circumstances not shown by the record here, 2 acre and ½-acre lots do not constitute appropriate rural growth. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

1997 Legislative amendments enacted through ESB 6094 more clearly defined the type of growth that is allowed in rural areas. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99)

A countywide uniform 5-acre minimum lot size conflicts with the GMA requirements for conservation of RLs and protection of CAs and prevents long-term UGA flexibility. Thus, it does not comply with the GMA. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

The GMA changes previously allowable land use patterns in rural areas. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

Extensive use of 1 du per 5 acre densities and allowance of even more intense densities in AMIRDs without the balance of lower 1 du per 10 acre and 1 du per 20 acre densities create high average densities that do not comply with RCW 36.70A.070(5) and .030(14). *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

RCW 36.70A.070(5)(b) requires that the rural element "shall provide for a variety" of rural densities. Variegated densities are particularly appropriate in counties whose existing rural characteristics can accommodate such a variety of densities. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

Cities are the appropriate entity for urban growth issues while counties must focus on rural growth. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

RCW 36.70A.070(5)(a) requiring a local government to develop a written record explaining how the rural element harmonizes the planning goals and meets the requirements of GMA does not always require the creation of a separate document or report adopted by local decision-makers. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

Application by a county of the criteria found in RCW 36.70A.070(5) in dealing with existing industrial uses that recognizes and protects the economic viability of such uses while restricting their location to appropriate areas, complies with the GMA. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

The 1997 amendments to RCW 36.70A.050(5) do not mandate infill of rural commercial parcels but allows such action subject to very strict requirements. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

The GMA requires rural areas to accommodate appropriate rural uses not characterized by urban growth and which is consistent with rural character. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

As long as an ordinance precluded new urban growth outside of UGAs, serving new rural development with community on-site septic systems rather than individual septic tanks did not violate the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 9-23-98)

An ordinance, adopted in response to a finding of noncompliance, that allowed smaller "urban sized" lots and reduced the buffer area for such "urban sized" lots in the rural areas and RLs did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (CO 2-5-98)

Existing zoning cannot be used as a sole criterion for the retention of commercial and industrial zoning under the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

The allowance of mining activity in rural areas did not violate the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

The use of historical development patterns for expansion of residential and commercial growth beyond what is needed to allow infill and provide appropriate services to the surrounding community did not comply with the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

The failure to change or make more difficult continuing development of "urban sized lots" or "multi-family zones" in rural areas did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

Nonresidential uses outside IUGAs must, by their very nature, be dependent upon being in a rural area and must be compatible both functionally and visually with the rural area. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

While rural lands may be the leftover meatloaf in the GMA refrigerator, they have very necessary and important functions including an important symbiotic relationship to provide necessary support of and buffering for RLs. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

"Rurban sprawl" has the same devastating effects on proper land uses and efficient use of tax dollars as urban sprawl. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A "variety of densities" requirement set forth in the GMA can be accomplished by existing and historical vested lot sizes, and need not be exacerbated in the CP. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Rural areas are the leftover meatloaf in the GMA refrigerator. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

An appropriate definition for rural areas is found in WAC 365-195-210(19). *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

Urban government facilities and services are not totally prohibited in rural areas but may only be placed there for compelling reasons. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

The GMA ends the prior practice of planning for tax revenue purposes in the rural areas of counties. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

2. LAMIRDs

There is no such rigid interpretation of RCW 36.70A.070(5)(d) that a county must pick one subsection of RCW 36.70A.070(5)(d) and that all Rural Freeway Services LAMIRDs must strictly comply with that subsection's specific criteria. *Anacortes v. Skagit County*, 00-2-0049c (CO 1-31-02, p. 16)

We remind the county that LAMIRD provisions were added to GMA to allowthe county to acknowledge **pre-existing** development, not as a prospective and ongoing rural development tool. The county must not add new LAMIRD designations six years after that opportunity was provided through addition of RCW 36.70A.070(5)(d). *Anacortes v. Skagit County*, 00-2-0049c (CO 1-31-02, p. 16)

We focus on two key questions as we review challenged Rural Freeway Service designations:

1. Was there "built environment" in July 1990?
2. Is the logical outer boundary properly defined as predominantly delineated by the build environment? *Anacortes v. Skagit County*, 00-2-0049c (CO 1-31-02 p. 16)

We do not agree with the theory that vested or "right to build" = "built environment" in the context of RCW 36.70A.070(5)(d). Vested projects can be built, but the property cannot be designated as a LAMIRD if it does not meet the criterion of containing build environment as of July 1, 1990. *Anacortes v. Skagit County*, 00-2-0049c (CO 1-31-02 p. 30)

The designation of a LAMIRD involving 2-acre lot sizes is not an "intensive" rural development under RCW 36.70A.070(5)(d). Such a LAMIRD designation also substantially interferes with Goals 2 and 12 of the Act. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A framework analysis for RCW 36.70A.070(5) is set forth. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

DRs which substantially intensify the uses allowed in a LAMIRD beyond those in existence on July 1, 1993, for Lewis County do not comply with the Act and substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

In designating a LAMIRD the area and the uses must be in existence on July 1, 1993, for Lewis County and such area and uses must be minimized and contained. Failure to comply with these requirements under the record in this case also substantially interferes with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Under RCW 36.70A.070(5)(e) a LAMIRD must not be used to permit a major industrial development or master plan resort in the rural area unless specifically permitted under the provision of .360 and .365. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Under the record in this case, the county improperly included vast areas of undeveloped property in its LAMIRD designations. Such areas are noncompliant and further substantially interfere with the goals of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A county may make minor adjustments to an LOB to include undeveloped property. Such undeveloped property is to provide for "infill" and does not comply when it is used to include large undeveloped properties outside the areas existing as of July 1, 1993. A county must take into account the requirement of including adequate public facilities and services that do not permit low density sprawl all within the LOB. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A LAMIRD designation is for the rural element and no RL lands may be included. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A framework analysis of the requirements of RCW 36.070A.070(5) is set forth in this case. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Where a subsequent LAMIRD ordinance reduced the areas that were established in the CP, the burden of showing substantial interference rests with the petitioners. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

LAMIRDs created under .070(5)(d)(i) (commercial, residential, or mixed use) must be principally designed to serve the "existing and projected rural population." A county must minimize and contain the existing area or existing uses. Lands within the LOB must not allow a "new pattern of low-density sprawl." *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

The failure to include any reference to the thirteen new LAMIRDs not previously designated within a supplemental FSEIS, fails to comply with SEPA requirements under GMA. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Vested rights do not constitute a "built environment" under RCW 36.70A.070(5)(d)(i). *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

In establishing an LOB under .070(5)(d)(iv) the county is required to clearly identify and contain the area, which must be delineated predominately by the built environment but may include limited undeveloped lands. The built environment includes those facilities which are manmade, whether they are above or below ground. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

A framework analysis concerning the requirements of the rural element in RCW 36.70A.070(5) is included. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

A LAMIRD which combines commercial and industrial uses is a mixed use area and is not subject to the exemption under .070(5)(d)(i) of industrial areas being freed from the requirement of being principally designed to serve existing and projected rural population. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)

An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)

The provisions of RCW 36.70A.070(5)(d)(i) that exempts industrial <u>areas</u> from the requirement of being principally designed to serve the existing and projected rural population does not apply to industrial <u>uses</u> within a mixed use LAMIRD. *Dawes v. Mason County* 96-2-0023 (RO 1-17-01)

The GMA does not allow expansion of original LOBs which were predominately delineated by the built environment existing on 7-1-90. LAMIRDs are not an appropriate target for commercial/industrial expansion. Expansion of the delineated LOBs constitutes "outfill" rather than "infill." *OEC v. Jefferson County* 00-2-0019 (FDO 11-22-00)

A CP which designates 10 small town LAMIRDs, 7 crossroads commercial LAMIRDs, rural freeway interchange commercial areas on every freeway interchange in the County, 2 industrial LAMIRDs involving 357 acres and 920 acres, 5 lake area and 4 regular area shoreline LAMIRDs, a "floating" LAMIRD for tourist services and 12 suburban enclaves which consist of "preexisting non-rural development" does not comply with the Act and substantially interferes with the goals of the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The provisions of RCW 36.70A.070(5)(e) prohibit the designation of an industrial LAMIRD that is a major industrial development unless the designation is specifically permitted under RCW 36.70A.365. The designation of an "industrial" LAMIRD that did not comply with RCW 36.70A.365 and also did not independently comply with the provisions of RCW 36.70A.070(5)(d) as to the proper establishment of the built environment and LOB, did not comply with the Act and substantially interfered with Goals 1, 2 and 12. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A proper LAMIRD designation must be initially based upon "existing areas and uses" as established by the built environment on 7-1-93 (for Lewis County). Once the area and use determination has been made then a LOB is to be established which contains and limits expansion of those areas and uses through appropriate infill. LAMIRDs are a "limited" exception to allow for existing (7-1-93) greater densities and intensities but only for a fundamentally "rural" development. All LAMIRDs are subject to the provision of .070(5)(a), (b) and (c) except for (c)(ii) and (iii). *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The purpose of a LAMIRD is to acknowledge and *contain* preexisting areas of more intensive rural development. The established LOB must contain the intensive rural development and must be based upon the built environment as it existed on 7-1-90. *ICCGMC v. Island County* 98-2-0023 (CO 3-22-00)

The GMA allows for infill within a properly established LOB, but does not allow for expansion beyond that line. *ICCGMC v. Island County* 98-2-0023 (CO 3-22-00)

Where a record fails to show why a previously invalidated area of land remained in the RAID, the local government's burden of proof is not met. *ICCGMC v. Island County* 98-2-0023 (CO 11-23-99)

A county may not continue to include previously invalidated "large lots" in a RAID for the purpose of connectivity, without evidence in the record that such lots constitute logical outer boundaries. The fact that excluding the lots from the RAID would create nonconforming lots is not sufficient evidence to warrant recision of invalidity. *ICCGMC v. Island County* 98-2-0023 (CO 11-23-99)

Under RCW 36.70A.070(5)(d) commercial, industrial, shoreline, or mixed use LAMIRDs are not required to assure visual compatibility nor reduce inappropriate conversion of lands into sprawling low-density uses in rural areas. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

AMIRDs are not mini-UGAs but are limited by the provisions of RCW 36.70A.070(5)(d)(iv). A county must: (1) minimize and contain AMIRDs, (2) existing *areas or uses* must be clearly identified, and (3) must be contained by a logical outer boundary which delineates the area by the built environment as it existed on 7-1-90. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

The question for review of AMIRDs is not whether they contain urban densities and uses, the question is whether the allowed densities and uses are minimized and contained and reflected by logical outer boundaries established on July 1, 1990. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

Under the record in this case, certain AMIRDs were found noncompliant. A finding of invalidity was also imposed. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

The record revealed that the Clinton and Freeland areas were areas involving non-municipal urban growth and were not appropriately designated as an AMIRD. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

An ordinance which does not clearly state that only recreational uses explicitly permitted by pre-GMA zoning and/or the GMA CP are allowed, does not comply with the GMA. *FOSC v. Skagit County* 98-2-0016 (FDO 5-13-99)

AMIRDs must be identified in the CP and must provide logical outer boundaries delineated by the built environment as it existed on July 1, 1990. Nothing in the GMA allows clustering to be used to the degree that would create new AMIRDs. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

Five-acre lots in a rural area are not, *per se*, a failure to comply with the GMA. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

While existing zoning cannot be used as the sole criterion for designation of areas of AMIRDs, it may be used as an exclusionary criterion. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

A county must appropriately balance the need to minimize and contain AMIRD boundaries with the desire to prevent abnormally irregular boundaries. The delineation of such boundaries does not require a concentric circle or a squared-off block. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

In rural areas a logical outer boundary delineated by the built environment must preclude allowance of new low-density sprawl. Public facilities and public services can only be provided in a manner that does not permit low-density sprawl. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

The GMA requires that limited areas of more intensive rural development be subject to minimization and containment. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

Even under the amendments contained in ESB 6094 more intensive development in the rural areas is limited to existing areas or uses and does not allow new patterns of sprawl of commercial, industrial and residential uses. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

The 1997 amendments to the GMA found in ESB 6094 provide considerable guidance in reviewing challenges to the rural element of the CP. Where a local government did not clearly delineate and identify logical boundaries over existing areas or uses of more intensive rural development, GMA compliance was not achieved under RCW 36.70A.070(5)(d)(iv). *Wells v. Whatcom County* 97-2-0030 (FDO 1-16-98)

The 1997 amendments to the GMA found in RCW 36.70A.070(5) are intended to accommodate pre-existing actual uses, not pre-existing zoning. Existing zoning cannot be used as a sole criterion for designating rural lands for more intense development. *Wells v. Whatcom County* 97-2-0030 (FDO 1-16-98)

SANCTIONS

A GMHB considers a wide range of evidence in deciding whether to recommend sanctions to the Governor. Primary in that decision is whether the local government is proceeding in good faith to meet

the goals and requirements of the GMA and whether the local government has unreasonably delayed taking the required action. *WEAN v. Island County* 95-2-0063 (CO 2-17-98)

A delay of more than 3 years past the deadline for adopting a CP is unreasonable and therefore a request to recommend sanctions was appropriate. *WEAN v. Island County* 95-2-0063 (CO 2-17-98)

In order to obtain a recommendation for sanctions a petitioner must show that the local government is engaged in a bad-faith failure to comply with the goals and requirements of the GMA. Such showing may exist from a local government's numerous missed deadlines. *FOSC v. Skagit County* 95-2-0065 (MO 1-27-97)

A recommendation for sanctions is only to be used in the most egregious of cases. This record did not demonstrate such a circumstance. *FOSC v. Skagit County* 95-2-0075 (CO 8-15-96)

Denial of access to sources of funding to local governments such as public works eligibility (RCW 43.155.070) and Centennial Clean Water Act (RCW 70.146.070) are referred to as "nonsanction consequences" of findings of noncompliance with the GMA. Those determinations are made by an appropriate agency and not associated with sanctions recommended by a GMHB. *Woodland, Petitioner* 95-2-0068 (FDO 7-31-95)

Sanctions were recommended. *Port Townsend v. Jefferson County* 94-2-0006 (CO 12-14-94)

SEQUENCING

Goal 12 of the GMA requires local governments to ensure that public facilities and services be adequate to serve the development at the time that it is available for occupancy, but does not require adequacy for densities beyond those existing at the time of availability so long as planning has been carried out that will ensure adequate public facilities and services for future denser occupancy. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

The substantial progress of Mason County towards compliance in RLs and CAs removes the previous noncompliance regarding sequencing. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Within municipal UGAs efficient phasing of infrastructure is the key element, not the interim shape of the city limits boundary. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A CP and DRs must reflect a clear statement that new growth will be encouraged within UGAs. Adding new commercial industrial areas in the rural portion of the county and amendment of a CP to add additional annexation requirements for lands within municipal UGAs does not comply with the Act. Within municipal UGAs annexations must be appropriately planned and must occur. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

A local government must examine and consider locating urban growth first in areas characterized by existing growth with existing public facilities and services. Only after such examination and consideration should a local government then examine the second area of characterization by urban growth to be later served adequately by existing public facilities and services and any additional needed public facilities and services. Only after exhaustive consideration of the first two locations should a local government place urban growth in the remaining portions of IUGAs or UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The failure of a county to complete RL and CA designations and DRs prior to IUGA designations, when such resource and CA lands were included in the IUGA, did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The sequencing of designating and conserving RLs prior to adopting IUGAs must be followed unless there are overriding reasons in the record not to do so. *FOSC v. Skagit County* 95-2-0075 (FDO 1-22-96)

The GMA sequence requirements of designation and conservation of RLs, designation and protection of CAs, adoption of CPPs, establishment of interim UGAs, adoption of a CP and DRs are not mandatory, but it would be extremely difficult for a local government to comply with the GMA if a different sequence of actions was used. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

SERVICE

RCW 36.70A.270(7) authorizing the adoption of "rules of practice and procedure" does not authorize a GMHB to impose a jurisdictional service of PFR requirement when no such specific authority is provided in the GMA. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)

Under RCW 36.70A.280 and .290 there is no requirement that a PFR be served anywhere except at the appropriate GMHB office. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)

Where a local government did not demonstrate any prejudice from the failure to serve the PFR on it, a motion to dismiss was denied. *TRG v. Oak Harbor* 97-2-0061 (MO 12-4-97)

The GMA does not have a requirement of service other than filing with a Board office. WAC 242-02-230 provides that substantial compliance is sufficient. In order to justify a dismissal for failure to serve, a local government must demonstrate that it has suffered prejudice. *Beckstrom v. San Juan County* 95-2-0081 (MO 10-30-95)

Under WAC 242-02-230 a GMHB has broad discretion on the issue of dismissal for failure to properly serve a local government. The substantial compliance test, as well as the absent of any legislative requirement in the GMA that mandates service on a local government, means that absent a showing of prejudice by the local government a GMHB has no basis upon which to grant dismissal for failure to serve. *Kennon v. Clark County* 95-2-0002 (MO 5-9-95)

SETTLEMENT EXTENSIONS/MEDIATION

Where the parties have previously stipulated to an extension of time for issuance of a FDO and as part of that extension order a date was fixed for the time of issuance of a new request for extension and no such request was made the case is dismissed. *Carlson v. San Juan County* 99-2-0008 (MO 2-29-00)

Where the parties stipulate and pursuant to RCW 36.70A.300(2)(b) a GMHB finds that the stipulation could resolve significant issues in dispute, the request for extension for issuing a FDO is granted. *FOSC v. Skagit County* 98-2-0016 (MO 11-19-98)

The new provisions of RCW 36.70A.300(2)(b) allow the parties to request a 90-day extension of the deadline for filing the FDO in order to explore options for settlement. *Birchwood v. Whatcom County* 97-2-0062 (MO 5-1-98)

After the appointment of a settlement conference officer the parties were able to reach agreement on five of the seven issues presented in the petition. *TRG v. Oak Harbor* 97-2-0061 (FDO 3-5-98)

The most effective solutions to GMA issues are those developed at the local level as long as those solutions fall within the parameters of the GMA. Mediation and settlement procedures used by the parties are commended. *Eldridge v. Port Townsend* 96-2-0029 (FDO 2-5-97)

SHORELINE MANAGEMENT ACT (SMA)

Pursuant to RCW 36.70A.280(1)(a), a growth management hearings board has jurisdiction to determine compliance with the Shoreline Management Act only "as it relates to the adoption of Shoreline Master Program or amendments thereto." Where the petition for review alleges only violations of the Shoreline Management Act but the county's challenged actions did not involve amending its Shoreline Master Program, the board has no jurisdiction. *Stephens v. San Juan County*, 002-2-0001 (Order of Dismissal, 3-20-02)

Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

Where a shoreline buffer reduction provision requires a geotechnical study to insure the setback would preclude the need for hard-armoring for the lifetime of the residence and which provides for native vegetation retention, the ordinance complies with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 10-12-00)

A provision that allows reduction of shoreline buffer areas through buffer averaging of existing residential setbacks, even with a requirement for a HMP, does not include BAS and does not comply with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

Where SEPA challenges are limited specifically to DOE's approval of SMP amendments, a GMHB reviews DOE's decision. Thus, a county motion to dismiss SEPA challenges is meaningless where the motion was not joined by DOE. *Floatplane v. San Juan County* 99-2-0005 (MO 5-3-99)

The recent amendment to RCW 36.70A.290(2) authorizes a petition to a GMHB to include a challenge to whether the CP, DR, or amendments thereto adopted under GMA also comply with the SMA. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

RCW 36.70A.300 and .330 provide jurisdiction for a GMHB to review compliance of GMA actions with the SMA in subsequent compliance hearings since the goals and policies of the SMA and local SMP are now a part of the requirements of GMA under RCW 36.70A.480(1). *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

The SMA and the SMP adopted by a local government are an element of a GMA CP. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

RCW 90.58.190 requires a GMHB to uphold the decision of DOE unless an appellant sustains the burden of proving that DOE's decision did not comply with the requirements of the SMA including the policies of RCW 90.58.020 and applicable guidelines, the goals and requirements of the GMA, and the SEPA requirements for adoption of amendments under RCW 90.58. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

A CP must be consistent with the policies and requirements of the SMA and the local SMP. *Moore-Clark v. La Conner* 94-2-0021 (FDO 5-11-95)

SHORELINES

1. Shorelines of Statewide Significance

A GMHB must uphold the decision of DOE concerning an amendment to the local SMP relating to shorelines of statewide significance unless the GMHB is persuaded by clear and convincing evidence that the DOE decision is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines set forth in WAC 173-16. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

2. Shorelines of the State

In an appeal of a proposed amendment to the local SMP for shorelines of the state, a GMHB must answer the questions of whether there is compliance with the requirements of the SMA, the requirements of the GMA, the policy of RCW 90.58.020 and applicable guidelines and SEPA compliance relating to the adoption of the proposed amendment. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

SHORELINES MASTER PROGRAMS (SMP)

Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

Where a CAO provisions are in addition to the SMP, there is no inconsistency between the CAO and the SMP. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

A CP policy adoption prohibiting mining within 100-year floodplain did not amount to a *de facto* amendment of the SMP and thus approval by DOE was not required. *Storedahl v. Clark County* 96-2-0016 (RO 9-15-97)

For GMA planning counties adoption of amendments to the local SMP after July 23, 1995, are reviewed by a GMHB. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

A SMP element of a CP and/or DR must be internally consistent and consistent with all other aspects of a CP and DRs adopted by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

Consistency between a CP and DRs and a SMP must be achieved immediately by a local government. The 24-month grace period set forth in RCW 90.58.060 relating to guidelines adopted by the DOE does not apply to GMA adoptions by a local government. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

The portions of a SMP dealing with goals and policies are considered an element of the CP. All other portions of the SMP are considered DRs. *Storedahl v. Clark County* 96-2-0016 (MO 7-31-97)

1995 amendments to RCW 36.70A.280 transferred jurisdiction to GMHBs to decide issues concerning amendments to local SMPs adopted by cities and counties planning under the GMA. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

Under RCW 36.70A.480(2) amendments to SMPs continue to be processed under the provisions of the SMA, which requires approval by DOE. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

A GMHB must uphold the decision of DOE concerning an amendment to the local SMP relating to shorelines of statewide significance unless the GMHB is persuaded by clear and convincing evidence that the DOE decision is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines set forth in WAC 173-16. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

In an appeal of a proposed amendment to the local SMP for shorelines of the state, the scope of review addresses the question of whether there is compliance with the requirements of the SMA, the requirements of the GMA, the policy of RCW 90.58.020 and applicable guidelines and SEPA. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

A local government in amending its SMP must consider consistency with the goals and requirements of the GMA, SEPA and the SMA in reaching its decision. DOE is not authorized to and does not include the provisions of GMA or SEPA in its decision. *San Juan County & Yeager v. DOE* 97-2-0002 (FDO 6-19-97)

Under RCW 36.70A.480, SMP use regulations are equivalent to GMA DRs. *Seaview v. Pacific County* 95-2-0076 (CO 2-6-97)

In 1996 the Legislature expanded the jurisdiction of a GMHB to include review of adoption of SMPs or amendments thereto. *Seaview v. Pacific County* 96-2-0010 (FDO 10-22-96)

Where an amendment to the SMP was adopted after a DNS that did not include actual consideration of environmental factors shown in the record, a conclusion that a mistake was made under the clearly erroneous test was reached. *Seaview v. Pacific County* 96-2-0010 (FDO 10-22-96)

A CP must be consistent with the policies and requirements of the SMA and the local SMP. *Moore-Clark v. La Conner* 94-2-0021 (FDO 5-11-95)

SHOW YOUR WORK – REQUIRED ANALYSIS

A reasonable analysis of current data is necessary prior to the establishment of an IUGA outside municipal boundaries. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

Under WAC 365-195-050, -500 a local government has the responsibility of providing a record that demonstrates appropriate analysis of GMA goals and requirements and more than mere consideration of them. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

SPRAWL

A CP amendment which replaces low-density residential housing with mixed use commercial on an 85-acre tract of land encourages urban type development in an area characterized by "very low-density residential development." The city's decision to infill needed mixed use commercial rather than requesting expansion of the UGA is in harmony with the anti-sprawl goals of the CP and the Act. *Downey v. Ferndale* 01-2-0011 (FDO 8-17-01)

A county has the duty to reduce the inappropriate conversion of *undeveloped* land (whether existing or allowable after GMA planning) into low-density development. RCW 36.70A.020(2) and .070(5)(c)(iii). *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The clustering provisions of the ordinance in this case do not minimize and contain rural development nor do they reduce low-density sprawl. Additionally, they substantially interfere with Goals 1, 2, and 10 of the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

LAMIRDs created under .070(5)(d)(i) (commercial, residential, or mixed use) must be principally designed to serve the "existing and projected rural population." A county must minimize and contain the existing area or existing uses. Lands within the LOB must not allow a "new pattern of low-density sprawl." *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)

A one unit to five acre density does not, *per se*, constitute low-density sprawl. *OEC v. Jefferson County* 00-2-0019 (FDO 11-22-00)

Rural character is a pattern of use and development in which open space, natural landscape and vegetation predominate over the built environment. Rural character fosters traditional rural lifestyles in a rural based economy, provides an opportunity for rural visual landscape and is compatible with uses by wildlife and for FWHCA and that reduces inappropriate conversion of undeveloped land into sprawling low-density development. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

STANDARD OF REVIEW

The legislative action taken by a local government is presumed valid upon adoption. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. *CCARE v. Anacortes* 01-2-0019 (FDO 12-12-01)

Ordinance amendments made in response to a finding of noncompliance are presumed valid. RCW 36.70A.320. Petitioners bear the burden of showing a lack of compliance under the clearly erroneous standard. RCW 36.70A.320. *ICCGMC v. Island County* 98-2-0023c (CO 11-26-01)

Under the record and BAS in this case the county complied with the Act by removing an inconsistency in definitional criteria for Type 1-5 waters. The county's choice not to adopt the new DNR definition of Type 3 waters found in WAC 242-16-030 was not an amendment to its CAO and was not clearly erroneous. *PPF v. Clallam County* 00-2-0008 (CO 10-26-01)

A local government has the burden of proof to demonstrate that an ordinance it enacted in response to a determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the Act. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

Petitioners have the burden of showing a lack of SEPA compliance for GMA purposes based on the clearly erroneous standard. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

BOCC findings are not "varieties" on appeal to a GMHB. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A county's SEPA determination is entitled to deference and accorded substantial weight. In this case petitioners have sustained their burden under the clearly erroneous standard of proving that the county failed to comply with the Act regarding SEPA. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A county has the burden of showing that the ordinance that was enacted "in response" to a determination of invalidity will no longer substantially interfere with the goals of the Act under RCW 36.70A.320(4). Where ordinances have been adopted prior to a finding of invalidity, a county accepted its burden for a request to rescind or modify those determinations of invalidity. Where no motion to rescind or modify was filed, the 45-day time limitation of RCW 36.70A.330(2) did not apply. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A local government has a burden of proof, under RCW 36.70A.320(4), that its action removes substantial interference with the goals of the Act in order to rescind or modify invalidity. *Panesko v. Lewis County* 00-2-0031c (MO 2-26-01)

The clearly erroneous standard applies to a determination of non-significance. *Achen v. Clark County*, 95-2-0067 (CO 11-16-00)

An action is clearly erroneous if a GMHB is left with a firm and definite conviction that a mistake has been made. *Achen v. Clark County*, 95-2-0067 (CO 11-16-00)

A GMHB must find compliance unless the petitioner sustains its burden of proof of showing the action is clearly erroneous in view of the entire record and the goals and requirements of the GMA. *Achen v. Clark County*, 95-2-0067 (CO 11-16-00)

In revealing the adequacy of an EIS or SEIS, a GMHB reviews the documents *de novo* under a rule of reason basis, giving substantial weight to the government agency's determination of adequacy. *Cooper Point v. Thurston County* 00-2-0003 (MO 5-9-00)

Ordinance amendments made in response to a finding of noncompliance are presumed valid. Petitioners bear the burden of proving under the clearly erroneous standard noncompliance with the Act. *ICCGMC v. Island County* 98-2-0023 (CO 3-6-00)

To satisfy the clearly erroneous standard, a GMHB must be left with a definite and firm conviction that a mistake has been made. *FOSC v. Skagit County* 98-2-0016 (FDO 5-13-99)

It is not the role of a GMHB to "balance the equities" in deciding a case. The GMHB role is to determine compliance. If noncompliance is found, a GMHB remands the issue and is not authorized to direct a specific decision on the merits of the case. Local governments are afforded a "broad range of discretion" in determining a methodology for compliance. A petitioner must sustain the burden of showing that the action of the local government did not comply with GMA under the clearly erroneous standard of review. *Vines v. Jefferson County* 98-2-0018 (FDO 4-5-99)

Under the clearly erroneous standard the relevant consideration is "has petitioner demonstrated by competent evidence that the county is clearly erroneous in its adoption of the current ordinance as it relates to the issues properly under consideration in this compliance hearing." *FOSC v. Skagit County* 96-2-0025 (CO 9-16-98)

RCW 36.70A.320(2) establishes that the burden is on petitioners to prove noncompliance under the clearly erroneous standard. *TRG v. Oak Harbor* 96-2-0002 (CO 3-5-98)

When a local government action was taken prior to July 27, 1997, the effective date of ESB 6094, but the GMHB hearing and decision was subsequent to that date, the procedural provisions of the new amendments apply to the decision in the case. Such provisions include substitution of the clearly erroneous standard for the previous preponderance burden. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

Where the hearing and decision for compliance postdate the effective date of ESB 6094, the petitioner has the burden of proof under the clearly erroneous standard. *Storedahl v. Clark County* 96-2-0016 (CO 12-17-97)

In reconciling the presumption of validity with the preponderance burden of proof a GMHB must analyze whether the ordinance was a result of application of GMA goals and requirements, whether the process complied with public participation goals and requirements, whether the decision-making process was supported by reasoned choices based upon appropriate factors actually considered as shown by the record, and whether the final product was within the range of discretion authorized by the GMA. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

STANDING

1. General

RCW 36.70A.330(2) allows standing in a compliance hearing to any petitioner in the previous case, as well as any participant who has standing to challenge the legislation enacted in response to the FDO remand. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

To achieve participation standing under RCW 36.70A.280(2)(b) a person must have participated during the local government process regarding the matter on which the review is being requested. The term "matter" is not equivalent to the term "issue", nor is it equivalent to the term "enactment". The word "matter" refers to a "subject or topic of concern or controversy." *Wells v. WWGMHB,* 100 Wn. App. 657 (2000). *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

In order to acquire standing a petitioner's participation must be reasonably related to the issue presented to a GMHB. A showing of some nexus between the participation and the issues raised is required. A GMHB has considerable discretion to determine whether the facts support the necessary connection in each case. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A local government fails in its attempt impose "participation standing" burdens on a petitioner when the local government did not hold any type of hearing on the SEPA issue now challenged by petitioner. It is not petitioner's duty to remind the City of its threshold SEPA compliance duties. *Achen v. Battleground* 99-2-0040 (RO 6-14-00)

Standing to participate in a compliance hearing is governed by RCW 36.70A.330(2). Both the petitioner and a person with standing to challenge the legislation enacted in response to the FDO, have standing. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)

A requirement to prepare an extensive and specific list of issues to present to the local government in order to preserve GMHB review would be contrary to the legislative goals of encouraging public participation at the local level and might well overburden local governments and their public hearings without any realistic corresponding benefit to them. Resolution for those valid and competing policy decisions rests with the Legislature. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)

There is no authority in the GMA that would allow a GMHB to impose the issue-specific requirements of RCW 34.05.554 as a condition precedent to review of a local government GMA actions. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)

The legislature resolved the concern with a local government being blindsided by a failure to raise a specific issue during the local government process by directing that a GMHB review be based on the record rather than *de novo*. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)

An informal entity that participated during the adoption process continued to have standing during the GMHB process and was not disqualified simply on the basis of a subsequent incorporation changing its legal status. *Liveable La Conner v. La Conner* 98-2-0002 (MO 6-19-98)

The GMA does not require that a petitioner address the specific issues raised in the appeal at the time of the local government process. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)

WAC 242-02-210(2)(d) does not require dismissal if the standing information can be found in the body of the petition or in other information supplied in response to a challenge. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

Because a city has an absolute right to file a PFR it has standing as a "participant" under RCW 36.70A.330(2). *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

A person, as defined in the GMA, does not have standing to challenge an amendment to a CPP. *FOSC v. Skagit County* 96-2-0032 (MO 3-7-97)

Only cities or the Governor may challenge a CPP adoption or amendment. *FOSC v. Skagit County* 96-2-0032 (MO 3-7-97)

RCW 36.70A.280(2) and (3) allow a city to have standing to raise all appropriate issues as a petitioner. The city is not limited to issues strictly relating to matters within its municipal boundaries. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

2. Participation

In order to acquire standing a petitioner's participation must be reasonably related to the issue presented to a GMHB. A showing of some nexus between the participation and the issues raised is required. A GMHB has considerable discretion to determine whether the facts support the necessary connection in each case. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

To achieve participation standing under RCW 36.70A.280(2)(b) a person must have participated during the local government process regarding the matter on which the review is being requested. The term "matter" is not equivalent to the term "issue", nor is it equivalent to the term "enactment". The word "matter" refers to a "subject or topic of concern or controversy." *Wells v. WWGMHB,* 100 Wn. App. 657 (2000). *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The submission of a petition signed by a person is sufficient to comply with the standard found in RCW 36.70A.280(2)(b) of participation in writing before the local government. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)

Participation standing cannot be based on input by others unless petitioner can show that specific reference to petitioner's claim was made by another. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

Input placed after the contested action was taken is not a basis for participation standing. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

Under RCW 36.70A.280(2)(b) appearance standing is obtained by the writing of a nonspecific letter to the local government during the GMA legislative process. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96)

In order to qualify as appearing under RCW 36.70A.280(2) a person must comment or attempt to comment upon the matter either verbally or in writing. Mere attendance is not sufficient. *Loomis v. Jefferson County* 95-2-0066 (MO 6-1-95)

The purpose of appearance as the main test for standing to appeal is to encourage and require meaningful public participation at the local level. *Loomis v. Jefferson County* 95-2-0066 (MO 6-1-95)

3. APA

A petitioner who demonstrates that it is now subject to a conditional use permit requirement not previously required satisfies the APA standing requirements of RCW 34.05.530. *NAC v. Jefferson County* 01-2-0014 (MO 5-24-01)

APA standing is based on RCW 34.05 and utilizes the two-prong test of *Trepanier v. Everett* 64 Wn. App 380 (1992). *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)

To show an injury in fact evidence must be presented that shows an actual adverse effect that is not merely conjectural or hypothetical. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)

The test for whether a person is aggrieved or adversely affected sufficiently to grant standing is found in RCW 34.05.530. *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

The proper method of showing APA standing is through affidavits rather than allegations contained in a PFR or a brief. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96)

The APA standing requirements of an injury in fact and a zone of interest are the proper tests to be applied. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96)

The test to determine APA standing is found in RCW 34.05.530. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96)

The APA standing requirements of RCW 34.05.530, in the legislative context of a GMA action, was satisfied under the facts of this case because petitioner owned property within an IUGA that was adversely affected by the local government action, a legitimate claim of GMA noncompliance for which the petitioner had a personal interest was provided, and the remedy of remand would provide a basis to eliminate the alleged prejudice. *Loomis v. Jefferson County* 95-2-0066 (MO 6-1-95)

4. SEPA

The same requirement for standing to challenge SEPA actions applies as to challenge any other GMA actions. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A local government fails in its attempt impose "participation standing" burdens on a petitioner when the local government did not hold any type of hearing on the SEPA issue now challenged by petitioner. It is not petitioner's duty to remind the City of its threshold SEPA compliance duties. *Achen v. Battleground* 99-2-0040 (RO 6-14-00)

The legislature has the sole authority to impose conditions for standing to file a PFR. There is no authority in the GMA for a GMHB to engraft a different and more rigorous standing requirement for SEPA challenges than that which is set forth in the plain language of the statute. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)

There is nothing in the language of RCW 36.70A.280(2) that indicates a legislative intent to treat standing requirements for a SEPA challenge any differently than any other GMA standing requirement.

There is no authority in the GMA for a GMHB to engraft a different and more rigorous standing requirement for SEPA challenges than that which is set forth in the plain language of the statute. *Achen v. Clark County* 95-2-0067 (MO 5-24-95)

Neither *Trepanier v. Everett* 64 Wn. App. 380 (1992) or *Levitt v. Jefferson County* 74 Wn. App. 668 (1994) apply to the question of whether a person with "appearance standing" may bring a SEPA challenge under the GMA. *Rasmussen v. Clark County* 95-2-0055 (MO 5-6-95)

There is nothing in the language of RCW 36.70A.280(2) that indicates a legislative intent to treat standing requirements for SEPA challenges any differently than any other GMA standing challenge. *Rasmussen v. Clark County* 95-2-0055 (MO 5-6-95)

5. Compliance

RCW 36.70A.330(2) allows standing in a compliance hearing to any petitioner in the previous case, as well as any participant who has standing to challenge the legislation enacted in response to the FDO remand. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

Standing to participate in a compliance hearing is governed by RCW 36.70A.330(2). Both the petitioner and a person with standing to challenge the legislation enacted in response to the FDO have standing. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)

A party who is a petitioner in a consolidated case does not qualify as a petitioner for purposes of standing for the compliance hearing where the compliance hearing issue was not part of the party's original PFR nor brief or argued by that party during the HOM process. *ICCGMC v. Island County* 98-2-0023 (MO 2-18-00)

STATE ENVIRONMENTAL POLICY ACT (SEPA)

A county, in creating 194 new LAMIRDs, may not ignore the obvious cumulative effect of such creation and must assess those effects under an appropriate SEPA process. Failure to do so substantially interferes with the goals and requirements of the Act. *Dawes v. Mason County,* 96-2-0023c (CO 8-14-02)

Under pertinent SEPA regulations, a SEPA official properly considers the environmental checklist but disregards information later submitted to a hearings board that was not provided during the public comment period. *Clean Water Alliance, et al. v Whatcom County*, 02-2-0002 (FDO 8-9-02)

A petitioner may timely raise issues regarding SEPA after the SEPA comment period and after the consideration of the SEPA official. The issues may be raised during the hearings afforded by the county for general consideration of the subject action prior to adoption by the county legislative body. *Clean Water Alliance, et al. v Whatcom County*, 02-2-0002 (FDO 8-9-02)

A change in density of a particular area from 1 du per 0.5 acre to 1 du per 5 acre, does not have a probable adverse environmental impact and the County's SEPA actions are in compliance with the Act. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

Petitioners have the burden of showing a lack of SEPA compliance for GMA purposes based on the clearly erroneous standard. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A county's SEPA determination is entitled to deference and accorded substantial weight. In this case petitioners have sustained their burden under the clearly erroneous standard of proving that the county failed to comply with the Act regarding SEPA. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

A county effort to avoid any effective SEPA review, particularly where the public and agencies with expertise have been precluded from comment on the SEPA analysis, fails to comply with the Act. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

The failure to include any reference to the thirteen new LAMIRDs not previously designated within a supplemental FSEIS, fails to comply with SEPA requirements under GMA. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

Where a new rural marine industrial designation allows a wide range of uses which are inconsistent with the SMA, SMP and GMA CA protections, the failure to even make a threshold determination does not comply with the SEPA requirements of the GMA. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

Where a County significantly amended its 1992 CAO, adopted several existing environmental documents under WAC 197-11-630 and issued a DNS, petitioners did not sustain their burden of showing the DNS was clearly erroneous. *PPF v. Clallam County* 00-2-0008 (FDO 12-19-00)

The clearly erroneous standard applies to a determination of non-significance. *Achen v. Clark County*, 95-2-0067 (CO 11-16-00)

A petitioner did not sustain its burden of showing that the potential cumulative impacts of lowering an LOS standard for transportation was "significant." *Achen v. Clark County,* 95-2-0067 (CO 11-16-00)

A phased environmental review process under WAC 197-11-060(5)(b) for an amended DR that incorporated previous environmental documents, complied with the GMA. *Servais v. Bellingham* 00-2-0020 (FDO 10-26-00)

Where a compliant SEPA process was fully set forth in the limited record accompanying a dispositive motion, the motion is granted. *Cooper Point v. Thurston County* 00-2-0003 (FDO 7-26-00)

The same requirement for standing to challenge SEPA actions applies as to challenge any other GMA actions. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

An FEIS is required to contain sufficient alternatives in its analysis to comply with WAC 197-11-442 and/or –440(5)(b) and thus to comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The use of a phased approach during an intergrated approach authorized by WAC 365-195-760(3) that requires that the front end of the GMA/SEPA analysis be thorough, is critical. A phased approach may not be used to simply delay SEPA analysis until permitting decisions. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

An EIS is designed to ensure awareness of potential environmental impacts by the decision maker. It does not dictate a particular legislative action and is thus an inappropriate document upon which to impose a finding of invalidity. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A local government fails in its attempt impose "participation standing" burdens on a petitioner when the local government did not hold any type of hearing on the SEPA issue now challenged by petitioner. It is not petitioner's duty to remind the City of its threshold SEPA compliance duties. *Achen v. Battleground* 99-2-0040 (RO 6-14-00)

A change in LOS standards involving a different methodology of traffic measurement does not substantially increase nor lower the LOS standards and a DNS determination was not clearly erroneous. *Progress v. Vancouver* 99-2-0038 (FDO 5-22-00)

Where the City did not make a threshold determination prior to adopting a particular fire protection amendment to the CFP of the CP, SEPA has not been been complied with and thus the City has failed to comply with the GMA. *Achen v. Battleground* 99-2-0040 (FDO 5-16-00)

In revealing the adequacy of an EIS or SEIS, a GMHB reviews the documents *de novo* under a rule of reason basis, giving substantial weight to the government agency's determination of adequacy. *Cooper Point v. Thurston County* 00-2-0003 (MO 5-9-00)

An SEIS is prepared in the same way as an EIS, except that scoping is optional under WAC 197-11-620(1). *Cooper Point v. Thurston County* 00-2-0003 (MO 5-9-00)

The record demonstrated full compliance with the notification procedure as set forth in WAC 197-11-455(1) for a draft SEIS. *Cooper Point v. Thurston County* 00-2-0003 (MO 5-9-00)

The sufficiency of the alternatives discussed in the SEIS as required by WAC 197-11-442 was met under the record in this case. *Cooper Point v. Thurston County* 00-2-0003 (MO 5-9-00)

A review of a DNS by a GMHB is conducted under the clearly erroneous standard. The burden of proof is on petitioners. *Willapa v. Pacific County* 99-2-0019 (FDO 10-28-99)

The concept of a demonstration wetlands bank involves both creation and distribution functions. Creation of a new wetland, under the record here, did not have any probable significant adverse effect. A non-conditioned DNS for the distribution of banking credits for the newly created wetland satisfies the clearly erroneous test and does not comply. *Willapa v. Pacific County* 99-2-0019 (FDO 10-28-99)

Where SEPA challenges are limited specifically to DOE's approval of SMP amendments, a GMHB reviews DOE's decision. Thus, a county motion to dismiss SEPA challenges is meaningless where the motion was not joined by DOE. *Floatplane v. San Juan County* 99-2-0005 (MO 5-3-99)

The Legislature has the sole authority to impose conditions for standing to file a PFR. There is no authority in the GMA for a GMHB to engraft a different and more rigorous standing requirement for SEPA challenges than that which is set forth in the plain language of the statute. *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)

The exhaustion of administrative remedies requirement found in RCW 43.21C.070(2) and WAC 197-11-608(3)(c) for SEPA review is specifically directed to actions taken in order to qualify for *judicial review* and does not apply to GMHB review under RCW 36.70A.280(1). *ICCGMC v. Island County* 98-2-0023 (MO 3-1-99)

Where a local government failed to analyze alternatives in a FSEIS based upon a population projection that was within the range developed by OFM, compliance with the SEPA provisions of GMA was not found. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

Where minor and insignificant changes were made in the FSEIS after the draft SEIS was issued, a new SEPA review was not required. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

Where a prior EIS covered the range of alternatives available for a new ordinance adopted some 2 years later, the mere passage of time was not a lack of SEPA compliance. *Hudson v. Clallam County* 96-2-0031 (CO 12-11-97)

If an amended ordinance did not change the meaning of the prior ordinance in any substantive manner but was only a procedural action, no SEPA threshold determination was necessary. *Pellett v. Skagit County* 96-2-0036 (FDO 6-2-97)

Under the evidence shown in this record, adoption of SEPA policies did not fulfill the mandatory requirement of RCW 36.70A.060(2) to adopt DRs that protect CAs. *CCNRC v. Clark County* 96-2-0017 (FDO 12-6-96)

A FEIS which inadequately addresses the impacts of a CP did not comply with the GMA. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

The standard of GMHB review for a DNS is the clearly erroneous test. *Seaview v. Pacific County* 96-2-0010 (FDO 10-22-96)

A GMHB does not have authority to direct the preparation of an EIS. Rather, an incorrectly adopted DNS will be remanded with a finding of noncompliance. It is up to the local government to determine the appropriate level of SEPA analysis and appropriate action after the remand. *Seaview v. Pacific County* 96-2-0010 (FDO 10-22-96)

Where a new IUGA designation was made without even a threshold determination required by WAC 197-11-310, compliance with the GMA was not achieved. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The emergency provisions allowing waiver of SEPA compliance did not apply to "citizen confusion over property rights" after a determination of invalidity under WAC 197-11-880. *FOSC v. Skagit County* 95-2-0065 (MO 4-4-96)

A DNS is reviewed under the clearly erroneous standard. The removal of mitigating measures from the DNS by the local government in the face of overwhelming evidence of significant adverse environmental impacts satisfied the requirement that a GMHB have a definite and firm conviction that a mistake was made. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

A pending appeal to the County Council of a hearing examiner's SEPA decision did not deprive a GMHB of jurisdiction to render a decision on SEPA under RCW 36.70A.280. *WEC v. Whatcom County* 95-2-0071 (FDO 12-20-95)

For a non-project action the scope of an EIS is determined by WAC 197-11-442(4) which limits the scope to a general discussion of the impacts of alternative proposals for policies contained in the CP. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A supplemental EIS must be prepared under WAC 197-11-405(4)(a) if there are substantial changes to a proposal such that the changed proposal is likely to have significant adverse environmental impacts. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A discussion of a no-action alternative in the EIS for a previously adopted community framework plan did not need to be rediscussed in the FSEIS for the CP. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The "rule of reason" directs a GMHB to determine whether the environmental effects of the proposed action were sufficiently disclosed, discussed and substantiated by supportive opinion and data. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Proposed affidavits and/or oral testimony concerning the adequacy of the FSEIS were not shown to be necessary nor of substantial assistance because the issue was sufficiently disclosed by the existing record. A motion to supplement the record was denied. *CCCU v. Clark County* 95-2-0010 (MO 7-19-95)

There is nothing in the language of RCW 36.70A.280(2) that indicates a legislative intent to treat standing requirements for a SEPA challenge any differently than any other GMA standing requirement. There is no authority in the GMA for a GMHB to engraft a different and more rigorous standing requirement for SEPA challenges than that which is set forth in the plain language of the statute. *Achen v. Clark County* 95-2-0067 (MO 5-24-95)

Neither *Trepanier v. Everett* 64 Wn. App. 380 (1992) or *Levitt v. Jefferson County* 74 Wn. App. 668 (1994) apply to the question of whether a person with "appearance standing" may bring a SEPA challenge under the GMA. *Rasmussen v. Clark County* 95-2-0055 (MO 5-6-95)

There is nothing in the language of RCW 36.70A.280(2) that indicates a legislative intent to treat standing requirements for SEPA challenges any differently than any other GMA standing challenge. *Rasmussen v. Clark County* 95-2-0055 (MO 5-6-95)

The decision of a local government to accept a FEIS is entitled to substantial weight. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

A GMHB examines the FEIS *de novo* but such review is restricted to examination of the record submitted. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

The adequacy of a FEIS is determined by the "rule of reason." *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

Under WAC 197-11-442 a non-project FEIS has a great deal of flexibility and the discussion of impacts and alternatives is only required at a level appropriate to the scope of the non-project proposal. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

A FEIS is adequate for a non-project CP where the environmental consequences are discussed in terms of a maximum potential development of the property. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

When not all commercial forestlands were designated and the status quo was maintained there was no action that required environmental review. Therefore, a DNS complied with the GMA. *OEC v. Jefferson County* 94-2-0017 (FDO 2-16-95)

A GMHB review of a DNS is governed by the clearly erroneous standard of review. A GMHB does not review the action *de novo,* nor is it a proper body for lead agency status. *Mahr v. Thurston County* 94-2-0007 (FDO 11-30-94)

Where an IUGA was reduced in size to protect environmentally sensitive CAs, the action did not have a probable adverse environmental impact. *Mahr v. Thurston County* 94-2-0007 (FDO 11-30-94)

A GMHB has jurisdiction to rule on SEPA challenges that relate to a GMA action or nonaction. *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)

A referendum filing qualifies as a legislative proposal under WAC 197-11-704(1)(c). A legislative proposal is an action. Thus a threshold determination was required and an environmental checklist should have been prepared. *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94)

Where a threshold determination was required for an amendment to a DR and none took place, an ordinance was void. The entire process must begin again at the point where the initial SEPA review was required. *North Cascades v. Whatcom County* 94-2-0001 (FDO 6-30-94)

A DNS is reviewed under the clearly erroneous standard. The burden of proof rests with the petitioner. *CCNRC v. Clark County* 92-2-0001 (FDO 11-10-92)

STIPULATION

Under RCW 36.70A.300(2)(b), if the parties so stipulate and a GMHB finds that potential settlement of all or some of the issues in a case could resolve significant issues in dispute, an extension of the 180-day limitation for issuing a ruling is appropriate. *Abenroth v. Skagit County* 97-2-0060 (MO 10-28-97)

Where a local government stipulates that it has not adopted a CP and implementing regulations by the deadline established by the Legislature, compliance with GMA will not be found. *Rosewood v. Friday Harbor* 96-2-0020 (MO 10-2-96)

STORMWATER

A County is required to review drainage, flooding and stormwater run-off in its own area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute the waters of the state. The analysis must be included in a CP in order to comply with the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County is required to resolve floodplain and stormwater issues between it and its cities and make the CP policies consistent as required by RCW 36.70A.070(1). *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

RCW 36.70A.070(1) requires a review of current "drainage, flooding, and stormwater runoff" and "guidance for corrective actions" to be included within the land use element of a CP. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

RCW 36.70A.070(1) requires that existing stormwater deficiencies be addressed and corrective action be taken by means of a county's CP and/or DRs where the record demonstrated that significant issues of groundwater quality and quantity used for public water supply existed. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

A CP must comply with the stormwater drainage aspects of RCW 36.70A.070(1). *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The mere listing of existing facilities does not comply with the mandate of RCW 36.70A.070(1) to adopt drainage and stormwater goals, policies, strategies and regulations. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

RCW 36.70A.070(1) requires that CP policies and DRs to provide solutions for existing as well as future problems of stormwater drainage must be adopted. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

SUBAREA PLANS

In order to comply with the Act, a county must complete a compliant subarea plan before urban reserve development or other increases in density are allowed to occur under the record in this case. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Where the subarea plan directs that a specific location is most suitable for light industrial growth, a DR that does not implement the subarea plan policy but rather allows unlimited commercial activity in the location, does not comply with the Act. Because of the small area delineated and the rapidly expanding nature of commercial development without any effective controls, substantial interference with Goals 5 and 11 are found. *Birchwood v. Whatcom County* 99-2-0033 (FDO 2-16-00)

Where an area is in an UGA but still under County jurisdiction, a County must use a joint and collaborative planning process under RCW 36.70A.210 and .020(11) rather than treat the City as "just another critic." *Birchwood v. Whatcom County* 99-2-0033 (FDO 2-16-00)

A GMHB has jurisdiction to decide whether a county has complied with the GMA when it adopted a new CP and DRs and continued use of a previously adopted subarea plan without any review for consistency or readoption at the time of adoption of the CP and/or DRs. *Carlson v. San Juan County* 99-2-0008 (MO 5-3-99)

The GMA is clear that a CP and DRs are to be adopted first and that the subarea plan process is supplemental to the original CP. *Carlson v. San Juan County* 99-2-0008 (MO 5-3-99)

A CP and any subarea plan contained therein must be internally consistent. Internal consistency is defined by WAC 365-195-500. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

A CP must comply with the goals and requirements of the GMA. A CP must have uniform policies and standards throughout in order to achieve internal consistency. Any subarea plans are subject to the same level of scrutiny as the entire CP. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

The land use element and any subarea plans adopted through it must be consistent with all other elements of the CP. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

SUBJECT MATTER JURISDICTION – *SEE* JURISDICTION

SUPPLEMENTAL EVIDENCE

Tapes of a BOCC meeting which occurred approximately four months after adoption of an ordinance would not be necessary or of substantial assistance in reaching a Board decision. A motion to supplement the record is denied. *Diehl v. Mason County* 95-2-0073c (CO 6-27-01)

BOCC findings are not "varieties" on appeal to a GMHB. *Panesko v. Lewis County* 00-2-0031c (FDO 3-5-01)

As a general proposition requested supplemental evidence compiled after the decision of the local government has been made will not be permitted. Such supplemental evidence may occasionally be admitted for issues involving a request for invalidity. Supplemental evidence of materials available to the local government, often developed by the local government, but not included in the record of deliberations are often admitted. Newspaper articles are not admitted for supplemental evidence. *Friday Harbor v. San Juan County* 99-2-0010c (MO 1-24-01)

An exhibit that was listed in the index but was not submitted for the HOM is not part of the record and will not be considered on a reconsideration motion. *Servais v. Bellingham* 00-2-0020 (RO 11-20-00)

Where a local government moves to supplement the record with a scientific study on the day before the compliance hearing is held, post-hearing briefing on the issue of admissibility was allowed. *ICCGMC v. Island County* 98-2-0023 (CO 11-17-00)

In determining what is "science" under BAS a process that consists of four stages of (1) making observations, (2) forming hypothesis, (3) making predictions and (4) testing those predictions are fundamental to the establishment of an appropriate "science." A major principle of scientific inquiry is replication. The principle of replication is most generally used in the scientific community as "peer review". *FOSC v. Skagit County* 96-2-0025c (CO 8-9-00) & *FOSC v. Skagit County* 00-2-0033c (FDO 8-9-00)

A motion to supplement the record with, or take official notice of, new ordinances adopted late in the PFR process will be denied. *Butler v. Lewis County* 99-2-0027c (MO 3-23-00)

Expert witnesses are allowed as supplemental evidence under RCW 36.70A.290(4). *Diehl v. Mason County* 95-2-0073 (CO 3-22-00)

Petitioners have the burden of demonstrating that their requested discovery would lead to evidence that would be necessary or of substantial assistance to a GMHB. *Vines v. Jefferson County* 98-2-0018 (MO 1-21-99)

The test of RCW 36.70A.290(4) for supplemental evidence to be of substantial assistance to a GMHB is reaching its decision was not met by a proposed exhibit involving a set of notes taken at a public meeting and an unsigned memorandum, both of which were prepared by petitioners. *CMV v. Mount Vernon* 98-2-0012 (MO 9-22-98)

A party requesting supplemental evidence must convince a GMHB that such evidence is necessary or of substantial assistance in reaching the decision. RCW 36.70A.290(4). *Abenroth v. Skagit County* 97-2-0060 (MO 10-16-97)

WAC 242-02-650 allows the admission of all relevant evidence including hearsay evidence if the offered hearsay is the type of evidence upon which reasonable and prudent persons are accustomed to rely in the conduct of their affairs. *Diehl v. Mason County* 95-2-0073 (CO 9-18-97)

A GMHB will only accept supplemental evidence that is necessary or of substantial assistance in reaching its decision. RCW 36.70A.290(4). In order for a GMHB to consider such supplemental evidence a request from a party to admit the evidence is necessary. *Diehl v. Mason County* 95-2-0073 (CO 9-18-97)

Even if a GMHB assumed that expert opinion interpreting the evidence in the record constituted supplemental evidence in this case, it was not necessary nor would it have been of substantial assistance. *JCHA v. Port Townsend* 96-2-0029 (MO 11-27-96)

Where discrepancies existed between the titles of maps and the titles in the index, the proposed exhibits were not necessary nor of substantial assistance in reaching a decision. *FOSC v. Skagit County* 95-2-0065 (MO 8-7-95)

The record is the source of evidence upon which a GHMB bases its decision about compliance or noncompliance. Regardless of who has the burden of proof and no matter how presumptively valid an action is, if the record does not contain evidence to refute valid challenges, the preponderance test will be met. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

The absence of evidence is often as compelling as its presence. *WEC v. Whatcom County* 94-2-0009 (FDO 2-23-95)

In order to be allowed, supplemental evidence must be necessary or of substantial assistance in reaching the decision by a GMHB. RCW 36.70A.290(4). *Mahr v. Thurston County* 94-2-0007 (MO 9-7-94)

A tour and view of a portion of the county prior to the hearing on the merits did not constitute evidence but was simply an aid to understanding the issues. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

TIERING

Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

A three-tier approach for maximizing efficient use of existing infrastructure and providing for future infrastructure complied with the GMA. *Eldridge v. Port Townsend* 96-2-0029 (FDO 2-5-97)

A local government must examine and consider locating urban growth first in areas characterized by existing growth with existing public facilities and services. Only after such examination and

consideration should a local government then examine the second area of characterization by urban growth to be later served adequately by existing public facilities and services and any additional needed public facilities and services. Only after exhaustive consideration of the first two locations should a local government place urban growth in the remaining portions of IUGAs or UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

RCW 36.70A.110(3) provides a phasing requirement for urban growth to be located first in areas that have adequate existing facilities and services and then in areas where a combination of existing and additional facilities and services will be provided through either public or private sources. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

The use of contingent and holding district zoning within the UGA outside of municipal boundaries to support concurrency and provide a mechanism for tiering of urban growth complied with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A local government must direct growth first to an area that contains existing public facilities and services and then expand such an area only after an analysis of the need for, cost of and ability to pay for new public facilities and services. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

TIMELINESS

1. PFR

An agricultural overlay amendment adopted in conjunction with readoption of the land use map created an issue of inconsistency which was timely appealed. *Hudson v. Clallam County* 96-2-0031 (MO 3-21-97)

A petition that is not filed within the 60-day period after publication, as required by RCW 36.70A.290(2), will be dismissed. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

A PFR must be filed within 60 days after notice of publication is made. There is no provision in the GMA for any expansion of the 60-day filing period. *Schlatter v. Clark County* 95-2-0078 (FDO 8-16-95)

Under the facts of this case the doctrine of laches did not apply and a PFR was timely filed. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)

Whether the act of adoption is by resolution or by ordinance, the GMA requires publication of a notice of that adoption in order to start the 60-day clock for filing a PFR. *Moore-Clark v. La Conner* 94-2-0021 (MO 2-2-95)

The 60-day limitation period for filing a PFR does not start until a notice of adoption has been published by the local government. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

2. FDO

While the GMA does now allow for an extension of time to issue a FDO if the parties are engaged in a settlement process, it does not allow a GMHB to suspend the deadline for issuance of a FDO or

otherwise dismiss a case because the issues may soon become moot. *WEAN v. Island County* 97-2-0064 (MO 2-23-98)

TRAFFIC MANAGEMENT ZONE (TMZ)

A temporary moratorium on development in a TMZ complies with RCW 36.70A.070(6)(b). *Progress v. Vancouver* 99-2-0038 (FDO 5-22-00)

TRANSFER OF DEVELOPMENT RIGHTS (TDRS)

Under RCW 36.70A.060(4), land within an UGA may not be designated agricultural unless the local government has enacted a program authorizing transfer or purchase of development rights. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

A city cannot designate property within its municipal boundaries as agriculture unless the city has enacted a program for transfer or purchase of development rights under RCW 36.70A.060(4). *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

TDRs provides a tool for permanent preservation of sensitive lands and open space. The GMA encourages its use. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

The allowance of TDRs from commercial forest to rural forest, with no density limit or cap for a cluster development, did not comply with the GMA. *OEC v. Jefferson County* 94-2-0017 (CO 8-17-95)

TRANSFORMATION OF GOVERNANCE

Where a county adopts a position that for many years that interlocal agreements adequately substituted for DRs to accomplish the purpose of transformance of governance, it cannot now complain that it does not have the ability to amend those interlocal agreements in order to achieve compliance. *FOSC v. Skagit County* 00-2-0050c (RO 3-5-01)

A CP and DRs must reflect a clear statement that new growth will be encouraged within UGAs. Adding new commercial industrial areas in the rural portion of the county and amendment of a CP to add additional annexation requirements for lands within municipal UGAs does not comply with the Act. Within municipal UGAs annexations must be appropriately planned and must occur. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

Adoption by a county of city DRs by reference to be applied within unincorporated UGAs complies with the Act except where the county fails to keep DRs current. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

One of the fundamental purposes of a CP is to achieve transformance of local governance within the UGA such that cities are the primary providers of urban services. *Abenroth v. Skagit County* 97-2-0060 (FDO 9-23-98)

That which is urban should be municipal. *Abenroth v. Skagit County* 97-2-0060 (FDO 9-23-98)

Implicit in RCW 36.70A.110(4) is the principle that incorporations and annexations must occur. *Abenroth v. Skagit County* 97-2-0060 (FDO 9-23-98)

Under RCW 36.70A.210(1), counties are providers of regional government actions and cities are the primary providers of urban governmental services. The long-term purpose of CP policies is the transformance of governance of urban growth to municipalities. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

The GMA has a strong preference for urban areas being served by and incorporated into municipalities and thus it is inappropriate to establish a non-municipal UGA in close proximity to an existing municipal UGA with no plan for transformance of governance. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

TRANSPORTATION ELEMENT

A county is not in noncompliance when it uses the corridor approach as a level-of-service methodology in rural areas. *Mudge, Panesko, Zieske, et al. v. Lewis County,* 01-2-0010c (CO 7-10-02) Also *Panesko v. Lewis County,* 00-2-0031c, *Butler v. Lewis County*, 99-2-0027c, and *Smith v. Lewis County*, 98-2-0011c (CO 7-10-02)

A petitioner did not sustain its burden of showing that the potential cumulative impacts of lowering an LOS standard for transportation was "significant." *Achen v. Clark County,* 95-2-0067 (CO 11-16-00)

A local government must establish a level of service, inventory transportation facilities and services to define existing facilities and travel levels, project future needs, and adopt a multi-year financing plan that is coordinated and consistent with the TIP plan. *Achen v. Clark County*, 95-2-0067 (CO 11-16-00)

A local government may adjust any of its LOS, needs analysis and/or funding analysis to fit local circumstances as long as the ultimate decision concerning these elements are consistent with each other, based upon facts established in the record and are not based upon artificial standards designed to avoid concurrency requirements. *Butler v. Lewis County* 99-2-0027 (FDO 6-30-00)

A County is not allowed to adopt an undefined, unmapped corridor-approach to transportation LOS measurement for purposes of concurrency which demonstrates no deficiencies while at the same time adopt a totally different methodology for funding applications which demonstrate significant transportation deficiencies, under the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Transportation policies contained in the CP must be consistent in order to comply with the GMA. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A County may not adopt such ambiguous standards to totally avoid concurrency requirements. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

A city's change of methodology for the measurement of traffic in the establishment of new LOS standards did not significantly raise or lower the LOS standards. *Progress v. Vancouver* 99-2-0038 (FDO 5-22-00)

A temporary moratorium on development in a TMZ complies with RCW 36.70A.070(6)(b). *Progress v. Vancouver* 99-2-0038 (FDO 5-22-00)

A change in LOS standards involving a different methodology of traffic measurement does not substantially increase nor lower the LOS standards and a DNS determination was not clearly erroneous. *Progress v. Vancouver* 99-2-0038 (FDO 5-22-00)

A new corridor-approach LOS standard discourages sprawl and encourages multi-modal transportation by avoiding costly intersection improvements that promote single occupancy vehicle use. *Progress v. Vancouver* 99-2-0038 (FDO 5-22-00)

A "less-than-ten-trip"exemption for requiring a transportation impact study would lead to an incomplete assessment of cumulative impacts on LOS and thus fails to comply with RCW 36.70A.070(6)(b). *Progress v. Vancouver* 99-2-0038 (FDO 5-22-00)

Transportation concurrency and LOS standards are tasks for the CP process and are not required in the designation of IUGAs. *Smith v. Lewis County* 98-2-0011 (FDO 4-5-99)

RCW 36.70A.070(e) requires that after adoption of a CP, DRs must prohibit approval of a development which would cause a transportation facility LOS to decline below that which was designated in the CP. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

A 10-year traffic forecast required by RCW 36.70A.070(6)(iv) that was contained in a computer model available to anyone but which was not published in the CP did not comply with the GMA. Publication serves two purposes: to ensure that the analysis was prepared and to make such analysis readily available to the local decision-maker and members of the public. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

URBAN DENSITIES

A county may not include extensive non-urban densities of 1 unit per acre within a non-municipal urban growth area absent a plan to increase the density of such areas at the time of incorporation. *Klein v. San Juan County, 02-2-0008* (FDO 10-18-02)

In order to comply with the Act, a county must complete a compliant subarea plan before urban reserve development or other increases in density are allowed to occur under the record in this case. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A CP policy directing minimum densities must be implemented by DRs that are consistent. Compliance cannot be found until both actions are complete. *Abenroth v. Skagit County* 97-2-0060 (FDO 9-23-98)

Projected densities for IUGAs at the end of the planning period, which only slightly increased current densities, did not comply with the GMA. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Urban density goals and requirements of the GMA relate primarily to anti-sprawl and compact development. They do not, in and of themselves, address affordable housing goals and requirements. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

There is no authority under the GMA to place an UGA within the confines of the federal national scenic area, particularly when the maximum density allowed is one dwelling unit per two acres, which is not an urban density. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A 2-4 dwelling unit per acre designation for a residential/sensitive area where the record demonstrated a complete analysis by the city and the designation was limited to areas of "unique open space character and sensitivity to environmental disturbances" complied with the GMA. *Berschauer v. Tumwater* 94-2-0002 (CO 12-17-94)

Urban densities of 1 dwelling unit per acre and 2-4 dwelling units per acre did not comply with the GMA. *Berschauer v. Tumwater* 94-2-0002 (FDO 7-27-94)

URBAN GROWTH

A CP amendment which replaces low-density residential housing with mixed use commercial on an 85-acre tract of land encourages urban type development in an area characterized by "very low-density residential development." The city's decision to infill needed mixed use commercial rather than requesting expansion of the UGA is in harmony with the anti-sprawl goals of the CP and the Act. *Downey v. Ferndale* 01-2-0011 (FDO 8-17-01)

The concept of establishing an unincorporated UGA at Eastsound and Lopez Village complied with the Act because the areas were "characterized by urban growth." *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

Goal 1 of the Act allows and encourages expansion to take place in urban areas where public facilities can accommodate such growth at a lower cost and with less burden to taxpayers and to the natural environment. *Dawes v. Mason County* 96-2-0023c (CO 3-2-01)

An urban reserve designation of a remainder area from a cluster development that is implemented throughout the county and at the owner's discretion does not comply with the Act. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Under the record in this case, the commercial/industrial needs analysis and shift of urban commercial/industrial allocation to non-urban areas substantially interferes with Goals 1 and 2 of the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

A shift of an urban commercial industrial lands allocation to non-urban areas under the record in this case does not comply with the Act. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

An overly permissive matrix of permitted uses in rural areas interferes with Goals 1 and 2 of the Act absent strongly defined mechanisms for encouraging development in urban areas and reducing inappropriate conversion of undeveloped land in rural areas. *Dawes v. Mason County* 96-2-0023c (RO 1-17-01)

While the sizing of the UGAs was compliant, the resulting densities were woefully inadequate to satisfy the GMA requirement to achieve urban growth within UGAs. A county does comply with its own CPPs nor with the GMA when it directs more than 50 % of the allotted population projection to rural areas. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Ambiguous and nondirective CP policies that fail to encourage development in urban areas or reduce sprawl and maps that are generalized and in many cases inaccurate in the designation of UGAs, did not comply with the Act. A CP must include objectives, principles and standards that are directive. DRs are to be consistent with and implement the CP and may not be used as a mechanism to automatically amend the CP or render it meaningless. Under the record in this case petitioner's burden of showing substantial interference with the goals of the Act has been satisfied. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

The allowance of unlimited clustering does not comply with the Act when its purpose is to assure greater densities in rural and resource areas and not to conserve RLs and open space. When allowable clustering results in urban growth it substantially interferes with the goals of the Act. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Simply because a rural area has sewer and small lots does not mean it is required to be designated as an UGA. *Solberg v. Skagit County* 99-2-0039 (FDO 3-3-00)

Where an area is in an UGA but still under County jurisdiction, a County must use a joint and collaborative planning process under RCW 36.70A.210 and .020(11) rather than treat the City as "just another critic." *Birchwood v. Whatcom County* 99-2-0033 (FDO 2-16-00)

Except in extremely unusual circumstances not shown in the record here, 2 acre and ½-acre lots constitute urban growth. *Friday Harbor v. San Juan County* 99-2-0010 (FDO 7-21-99) *See Diehl v. Mason County* 94 Wn. App. 645 (1999)

The record revealed that the Clinton and Freeland areas were areas involving non-municipal urban growth and were not appropriately designated as an AMIRD. *ICCGMC v. Island County* 98-2-0023 (FDO 6-2-99)

Urban growth represents more than just residential densities. Commercial and industrial growth is a component that must be addressed. *Cotton v. Jefferson County* 98-2-0017 (Amended FDO 4-5-99)

Under the GMA infill is the intensification of density within a constrained area. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

The failure of a local government to rezone areas which were no longer needed or appropriate for commercial and industrial use outside of UGAs, when a local government also took action to make it possible to create new commercial and industrial zones in the rural area, did not comply with the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

The readoption of all previous commercial and industrial zoning outside of UGAs with no analysis of the need for, the cost of, or the appropriateness of the location of the zones, did not comply with the GMA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

Under the GMA land is included in an UGA if it is deemed appropriate for urban development. If it is not appropriate for urban development it should be left out of an UGA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

Simply because water and/or sewer are available does not justify allowance of new urban growth. Need and availability of alternatives must be analyzed as well as the overall tax burden or cost of the various alternatives. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

Existing development alone does not justify allowance of new urban growth outside of properly established IUGAs or UGAs. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

The GMA does not allow designation of an UGA that is not expected to ever develop at urban densities simply to allow a city to have greater control over its water supply, particularly when the county would continue to exercise planning jurisdiction over the area and no interlocal agreement had been made. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

A failure to provide minimum lot sizes and maximum number of lots per site in clustering provisions of a DR which continued to allow urban growth outside of properly established UGAs, did not comply with the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

The county must size an IUGA large enough to accommodate the growth that will be directed into it. The Legislature has determined that directing growth to urban areas provides for better use of RLs and more efficient use of taxpayer dollars. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The GMA requires local governments to adopt policies, DRs, and innovative techniques to prohibit urban growth outside of properly established IUGAs and UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

A local government must examine and consider locating urban growth first in areas characterized by existing growth with existing public facilities and services. Only after such examination and consideration should a local government then examine the second area of characterization by urban growth to be later served adequately by existing public facilities and services and any additional needed public facilities and services. Only after exhaustive consideration of the first two locations should a local government place urban growth in the remaining portions of IUGAs or UGAs. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

The GMA does not allow designation of areas for urban growth where no such urban growth is expected within the planning period. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

Scattered residential areas which have serious public facility and service deficiencies are not allowed to be developed at urban levels. *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (FDO 9-12-96)

RCW 36.70A.110(3) provides a phasing requirement for urban growth to be located first in areas that have adequate existing facilities and services and then in areas where a combination of existing and additional facilities and services will be provided through either public or private sources. *TRG v. Oak Harbor* 96-2-0002 (FDO 7-16-96)

Urban growth in non-urban areas discourages development where adequate public facilities and service exist, encourages sprawl, does not allow for efficient multi-modal transportation systems, interferes with the maintenance and enhancement of resource-based industries, discourages the retention of open space

and conservation of fish and wildlife habitat. Such new urban growth also decreases access to RLs and water, and fails to protect the environment and our state's high quality of life, including air and water quality and availability of water. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

The GMA makes no provisions for new suburban development. Urban growth is to be placed within UGAs and areas outside of UGAs are to have rural growth. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

The allowance of new urban commercial and new urban industrial growth outside properly established IUGAs substantially interfered with the goals of the GMA. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

There is no discretion for local governments to allow new urban growth outside UGAs. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

Urban growth is the use of the land for the location of buildings, structures, and impermeable surfaces and as such is incompatible with the primary use of the land for food, agriculture, fiber or materials. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

The increase in intensity of both residential and commercial uses, a minimum density, higher density bonuses and adjustments, and accessory dwelling unit ordinance, a mixed use district and a transit overlay district, all of which allowed for more compact urban development within the city, complied with the GMA with regard to adoption of infill mechanisms. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

Industrial growth outside of UGAs can only occur under the specified criteria set forth in the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Availability of public facilities does not in and of itself define an area as characterized by urban growth. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

There is no authority under the GMA to place an UGA within the confines of the federal national scenic area, particularly when the maximum density allowed is one dwelling unit per two acres, which is not an urban density. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The failure to prohibit new urban development in existing undeveloped commercial and industrial zones outside an IUGA did not comply with the GMA. *Port Townsend v. Jefferson County* 94-2-0006 (CO 12-14-94)

New urban growth is prohibited outside of a properly established IUGA. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

URBAN GROWTH AREAS (UGAS)

A county cannot be found in compliance with its urban growth boundaries when data are still being collected on water capacity and where the final UGA line should be drawn. *Klein v. San Juan County*, 02-2-0008 – Lopez Island Urban Growth Area (FDO 10-14-02)

A county cannot be found compliant with the requirements of the GMA regarding UGAs until its capital facilities analysis with respect to wastewater and drainage services is complete, it has considered an appropriate market factor, it has established appropriate urban densities for a non-municipal UGA, and until it has precluded incompatible uses in the Airport Overlay Zone. *Klein v. San Juan County*, 02-2-0008 - Eastsound NMUGA (FDO 10-15-02)

A CP amendment which replaces low-density residential housing with mixed use commercial on an 85-acre tract of land encourages urban type development in an area characterized by "very low-density residential development." The city's decision to infill needed mixed use commercial rather than requesting expansion of the UGA is in harmony with the anti-sprawl goals of the CP and the Act. *Downey v. Ferndale* 01-2-0011 (FDO 8-17-01)

An additional designation of municipal UGA areas that have existing sewer and water or that can be efficiently provided with the same, that are outside any floodplain designation and that impose a 1:5 lot size until the city completes a very detailed planning process complies with the Act. *Mudge v. Lewis County* 01-2-0010c (FDO 7-10-01)

The fact that water and sewer facilities are provided by non-county serving agencies does not relieve the county of including the budgets and/or plans in its analysis of the proper location of an UGA. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such needs for infrastructure does not comply with the GMA, nor did the county properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The proper sizing of an UGA is not simply a density calculation. The community residential preference is not an appropriate criterion for sizing under RCW 36.70A.110. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The concept of establishing an unincorporated UGA at Eastsound and Lopez Village complied with the Act because the areas were "characterized by urban growth." *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The use of the term "interim" in a designation of UGA process where a county acknowledged that the designations were a "work in progress" did not relieve the county of the duty to comply with all the goals and requirements concerning UGAs before compliance with the GMA can be achieved. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

Counties are required to identify "green belt and open space areas" within UGAs and to "identify open space corridors within and between" UGAs. Official maps, which do not show these areas fail to comply with the GMA. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Within municipal UGAs efficient phasing of infrastructure is the key element, not the interim shape of the city limits boundary. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A CP and DRs must reflect a clear statement that new growth will be encouraged within UGAs. Adding new commercial industrial areas in the rural portion of the county and amendment of a CP to add additional annexation requirements for lands within municipal UGAs does not comply with the Act.

Within municipal UGAs annexations must be appropriately planned and must occur. *Anacortes v. Skagit County* 00-2-0049c (FDO 2-6-01)

Adoption by a county of city DRs by reference to be applied within unincorporated UGAs complies with the Act except where the county fails to keep DRs current. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

Where a county has limited resources and a predominantly rural configuration a GMHB will give latitude to implement new UGAs in a way that reflects the county's unique character. *Dawes v. Mason County* 96-2-0023 (CO 1-14-99)

One of the fundamental purposes of a CP is to achieve transformance of local governance within the UGA such that cities are the primary providers of urban services. *Abenroth v. Skagit County* 97-2-0060 (FDO 9-23-98)

Because the GMA directs that growth will first be channeled to municipalities and then areas already characterized by urban growth, non-municipal UGAs which include assignment of new urban population to unincorporated areas not already characterized by urban growth will be closely scrutinized. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

In the UGA delineation contained in the CP a greater deference to local governments as to size is appropriate over that given to IUGAs. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

In order to comply with the GMA, large UGAs must have measures in place to ensure development is truly urban and efficiently phased. In the case of oversized industrial UGAs conversion to other uses must be precluded to ensure long-term preservation of industrial land. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

A GMHB will always scrutinize the size of an UGA much more closely if it includes RLs. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

Under the GMA land is included in an UGA if it is deemed appropriate for urban development. If it is not appropriate for urban development it should be left out of an UGA. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

Under RCW 36.70A.060(4) land within an UGA may not be designated agricultural unless the local government has enacted a program authorizing transfer or purchase of development rights. *Abenroth v. Skagit County* 97-2-0060 (FDO 1-23-98)

In the absence of an interlocal agreement giving the city control over land use policies and DRs, no additional protection for CAs in the proposed UGA was available. The record did not reveal why the county was unable to protect the watershed had it not been designated for urban growth. *Wells v. Whatcom County* 97-2-0030 (FDO 1-16-98)

Where an area of only 195 acres contained little or no vacant land for future residential or commercial growth and was already serviced by city water and sewer and would not contribute to sprawl or insufficient expansion of public services and facilities, the inclusion of such area in an UGA complied with the GMA, particularly taking into account the added deference directed by RCW 36.70A.3201. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

Where a county established a 5-year minimum period before changes to the boundaries of UGAs can be made and established criteria for the consideration of such UGA movement, such action was in compliance with the GMA. *Achen v. Clark County* 95-2-0067 (CO 12-17-97)

The language of the GMA is clear; counties designate UGAs, cities do not. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)

Without county adoption, city-adopted UGAs extending beyond municipal boundaries have no regulatory effect. *Wells v. Whatcom County* 97-2-0030 (MO 11-5-97)

The definition of urban growth in RCW 36.70A.030(14) does not distinguish between residential and other types of urban growth. The key question is whether the allowed growth is urban in nature and if so whether it occurs in an area suitable for and delineated by GMA for urban growth. *WEAN v. Island County* 95-2-0063 (CO 10-6-97)

A proposed resort with a population of nearly 1,000 people in an area involving a maximum of 160 acres that will require urban services and facilities meets the RCW 36.70A.030(14) definition of urban growth. Location of such a resort outside of an IUGA where no GMA CP has been adopted for over 3 years after the deadline did not conform to GMA goals and substantially interfered with the fulfillment of those goals. *WEAN v. Island County* 95-2-0063 (CO 10-6-97)

The protection of CAs is a function of a proper ordinance, not by the establishment of an UGA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

A failure to provide minimum lot sizes and maximum number of lots per site in clustering provisions of a DR which continued to allow urban growth outside of properly established UGAs did not comply with the GMA. *WEC v. Whatcom County* 94-2-0009 (MO 7-25-97) *C.U.S.T.E.R v. Whatcom County* 96-2-0008 (MO 7-25-97)

An ordinance which allowed expansion of existing commercial or industrial uses other than resource based or rural neighborhood commercial uses to the full size of the existing parcel in areas outside of an UGA, substantially interfered with the goals of the GMA and was declared invalid because it allowed urban growth in rural areas. *FOSC v. Skagit County* 95-2-0065 (MO 7-14-97)

RCW 36.70A.110 prohibits new urban growth outside of properly established UGAs. *Hudson v. Clallam County* 96-2-0031 (FDO 4-15-97)

Where a city adopted its CP prior to the one adopted by the county and the city included conceptual analysis for a potential UGA outside of municipal limits, compliance with the GMA was achieved. *Eldridge v. Port Townsend* 96-2-0029 (FDO 2-5-97)

Where an UGA would allow an approximately 40,000 increase in population, and the projected population increases amounted to approximately 27,000, the UGA did not comply with the GMA. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

Establishment of specific UGAs with finite boundaries and a quantifiable allocation of population must first be made before any credible capital facilities analysis can occur. *Dawes v. Mason County* 96-2-0023 (FDO 12-5-96)

Continued incremental movement of an UGA boundary that promotes sprawl and inefficient use of tax money did not comply, and also substantially interfered, with the goals of the GMA. *Achen v. Clark County* 95-2-0067 (RO 11-20-96)

The purpose of recognizing and projecting rural growth is not to encourage growth in rural areas but rather to decide an appropriate and correct foundation for determining the proper size of the UGAs. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

The GMA requires counties to adopt policies, DRs and innovative techniques to prohibit urban growth outside properly established UGAs. The more a county utilizes these techniques to funnel growth into urban areas, the more discretion is afforded under the GMA in sizing UGAs. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

If an area is within municipal boundaries it must be included in an UGA under RCW 36.70A.110(1). *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

A city cannot designate property within its municipal boundaries as agriculture unless the city has enacted a program for transfer or purchase of development rights under RCW 36.70A.060(4). *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

Where a local government adopts a 50% market factor for industrial use and establishes UGAs consistent with that projection, the actually siting of an industrial property two years later cannot be used as the basis for expanding the UGA. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

A DR that allows annual movement of UGAs, combined with minimal infilling regulations and initial large sizing because of a significant market factor, does not provide the impetus for compact urban growth and did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (CO 10-1-96)

The GMA makes no provisions for new suburban development. Urban growth is to be placed within UGAs and areas outside of UGAs are to have rural growth. *WEAN v. Island County* 95-2-0063 (CO 4-10-96)

There is no discretion for local governments to allow new urban growth outside UGAs. *WEC v. Whatcom County* 94-2-0009 (CO 3-29-96)

A municipal CP which demonstrated that the current municipal limits were well in excess of any population projection, which did not have any infill policies nor regulations and which provided for a 30% open space requirement for any new development, did not comply with the goals and requirements of the GMA and could not be the basis for establishing an UGA outside of municipal limits. *Achen v. Clark County* 95-2-0067 (RO 12-6-95)

The use of an "urban reserve" planning mechanism for timeframes in excess of the 20-year requirement of the GMA did not violate the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A proper UGA location involves more than just population projections. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The use of an urban reserve area without defined standards of conversion to an UGA, in conjunction with a large market factor, did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Constant incremental movement of an urban growth boundary to always have a 20-year reserve does not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The use of contingent and holding district zoning within the UGA outside of municipal boundaries to support concurrency and provide a mechanism for tiering of urban growth complied with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The inclusion of 5,000 acres of unusable industrial acres as part of the UGA did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The lack of appropriate density and infill provisions in a CP and/or DR did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Where the record demonstrated that even at a minimum of six dwelling units per acre a city would not have to expand beyond its municipal boundaries for more than the next 20 years, there is a lack of compliance with the GMA by including an UGA outside of the municipal boundaries. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The fact that water and sewer services are or could be made available to an area does not mean the area is required to be included in an UGA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Public facility availability cannot be the sole criterion for inclusion of an area within an UGA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

There is no authority under the GMA to place an UGA within the confines of the federal national scenic area, particularly when the maximum density allowed is one dwelling unit per two acres, which is not an urban density. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Existing urbanization does not always dictate inclusion of the area within an UGA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The establishment of a noncontiguous UGA connected to a contiguous UGA by means of exclusion of thousands of acres of land that would otherwise have been designated as RLs, did not comply with the GMA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

A local government has a wide range of discretion in determining specific designations within a properly established UGA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

The GMA does not establish specific goals or requirements for particular designations within a properly established UGA. *Achen v. Clark County* 95-2-0067 (FDO 9-20-95)

Where a unique three-city configuration coupled with excellent anti-sprawl goals, policies and strategies are present in a CP, the UGA boundary complied with the GMA even though from a strict numerical formula it was overly large. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

A county has the ultimate responsibility of determining population figures and urban growth boundaries. *Reading v. Thurston County* 94-2-0019 (FDO 3-23-95)

URBAN SERVICES

The provisions of RCW 36.70A.070(6)(b) and RCW 36.70A.020(12) establish the concurrency requirement of the Act. Under the record in this case, San Juan County complied with the Act because water and sewage hookups must be "in place" at the time "development occurs," despite acknowledged work to be done on appropriate LOS levels for UGAs and LAMIRDs. *Mudd v. San Juan County* 01-2-0006c (FDO 5-30-01)

A clustering ordinance which prohibits urban service standards, involves very limited numbers in sizing of clusters, requires affordable housing and applies only to limited areas outside of UGAs complies with the Act. RCW 36.70A.070(5)(b) authorizes a county to permit rural development through clustering to accommodate appropriate rural densities. The provisions of .070(5)(c) for containment, visual compatibility and reduction of low-density sprawl applies to such clusters. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

The fact that water and sewer facilities are provided by non-county serving agencies does not relieve the county of including the budgets and/or plans in its analysis of the proper location of an UGA. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such needs for infrastructure does not comply with the GMA, nor did the county properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

Compliance with the Act is achieved where a county develops LOS standards for rural and for urban water services and precludes extension of urban services into rural areas. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

Efficient phasing of urban infrastructure is the key component to transformance of governance. Annexation should occur before urban infrastructure is extended. Interlocal agreements that do not ensure that annexation will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs does not comply with the Act. *FOSC v. Skagit County* 00-2-0050c (FDO 2-6-01)

Under the provisions of RCW 36.70A.110(4) prohibiting urban governmental services in rural areas except in limited circumstances the phrase "basic public health and safety and the environment" involves two components. "Basic public health and safety" involves a component that encompasses a variety of protections for human well-being. "The environment" relates to protections that are directly beneficial to flora and fauna, but usually only indirectly beneficial to human well-being. *Cooper Point v. Thurston County* 00-2-0003 (FDO 7-26-00)

RCW 36.70A.110(4) does not allow a county to extend a 4-inch sewer line when the county has not shown that the extension is "necessary to protect public health and safety and the environment". The record only demonstrated that a "betterment of health and/or environment" would be obtained. *Cooper Point v. Thurston County* 00-2-0003 (FDO 7-26-00)

Simply because a rural area has sewer and small lots does not mean it is required to be designated as an UGA. *Solberg v. Skagit County* 99-2-0039 (FDO 3-3-00)

Compliance with the language of a local government's own ordinance is required before compliance with the GMA can be achieved. The availability of public water services only, without public sewer and other urban services, does not provide the basis for logically-phased and efficiently-served urban development. *ICCGMC v. Island County* 98-2-0023 (RO 7-8-99)

The absence of language within a DR that prohibits extension of urban governmental services outside an IUGA does not comply with the CPPs and therefore did not comply with the GMA. *OSC v. Skagit County* 95-2-0065 (FDO 8-30-95)

Urban government facilities and services are not totally prohibited in rural areas but may only be placed there for compelling reasons. *Port Townsend v. Jefferson County* 94-2-0006 (FDO 8-10-94)

UTILITIES ELEMENT

A designated UGA without any updated or adequate inventory, estimate of current and future needs or adoption of methodologies to finance such needs for infrastructure does not comply with the GMA, nor did the county properly address urban facilities and services through an analysis of capital facilities planning. *Durland v. San Juan County* 00-2-0062c (FDO 5-7-01)

VESTED RIGHTS

A determination of invalidity does not affect previously vested rights under RCW 36.70A.302(2). *Friday Harbor v. San Juan County* 99-2-0010c (RO 1-3-01)

WATER

Increased protections adopted for Type 4 and 5 waters that feed into salmon bearing streams are found to comply under the record in this case. *FOSC v. Skagit County* 96-2-0025 (CO 2-9-01)

Compliance with the Act is achieved where a county develops LOS standards for rural and for urban water services and precludes extension of urban services into rural areas. *Evergreen v. Skagit County* 00-2-0046c (FDO 2-6-01)

A County is required to provide in its CP measures that provide for protection of quality and quantity of groundwater used for public water supplies. The County may not determine that water quality and quantity issues will be resolved in the permit process. *Butler v. Lewis County* 99-2-0027c (FDO 6-30-00)

Under RCW 36.70A.070(1) a CP must provide for protection of quality and quantity of groundwater used for public water supplies. Such protection is different than and separate from an ordinance for CAs. The protection may be specifically included in the CP by regulation or later implemented by DRs. Compliance cannot be found until one or the other has been accomplished. *MCCDC v. Shelton* 96-2-0014 (FDO 11-14-96)

The failure to provide for an adequate water supply for urban densities showed that the establishment of an IUGA did not comply with the GMA. *Loomis v. Jefferson County* 95-2-0066 (FDO 9-6-95)

WETLANDS – *SEE* CA

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Solberg, Thomas H	01-2-0004c 99-2-0039c
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Stiles, William & Betty	00-2-0049c
Steed, George W.	00-2-0062c
Symons, Joe	00-2-0062c
Swinomish Indian Tribe	02-2-0012c 02-2-0009 01-2-0004c 00-2-0049c 00-2-0033c 96-2-0025c
Taxpayers for Responsible Government	97-2-0061 96-2-0002
Tenneson, Glen	01-2-0004c
Vancouver Audubon Society	96-2-0017 92-2-0001
Vinatieri, Michael	02-2-0007 01-2-0010c 00-2-0031c 99-2-0027
Vines, Raymond & Liann	98-2-0018
Waddington, Michael	92-2-0001

PETITIONER	CASE
Washington Environmental Council	95-2-0071 94-2-0017 94-2-0001 92-2-0001
Washington Seaplane Pilots Association	99-2-0005
Watershed Defense Committee	94-2-0001
Watershed Defense Fund	96-2-0008 95-2-0071
Wells, Sherilyn	00-2-0002 02-2-0002 97-2-0030
Whatcom Environmental Council	96-2-0008 95-2-0071 94-2-0009
Whatcom Resource Watch, et al.	97-2-0030
Whatcom Sand & Gravel Association	93-2-0001
Whidbey Environmental Action Network	00-2-0054 00-2-0001 98-2-0023 97-2-0064 95-2-0063
Willapa Grays Harbor Oyster Growers Association	99-2-0019
Williams, Teitge, & McCollum	94-2-0013
Wirch, Theodore	96-2-0035
Woodland School District	00-2-0026
Woodland, City of	95-2-0068
Woodside, Raymond & Merry	96-2-0016
Woodside, Virginia	96-2-0016
Wright, Richard	98-2-0023
Xaver, Andrea	01-2-0004d 95-2-0065
Yanisch, Annette	02-2-0007 01-2-0010c 00-2-0031c 99-2-0027
Yeager, Philip & Peggy	97-2-0002
Zieske, Deanna	02-2-0007 01-2-0010c

CASE LIST (BY RESPONDENTS NAME)

RESPONDENT	CASE
Anacortes, City of	01-2-0019c
Battleground, City of	99-2-0040 95-2-0067
Bellingham, City of	00-2-0020
Camas, City of	96-2-0017 95-2-0067
Clallam County	01-2-0020 00-2-0008 96-2-0031 95-2-0083
Clark County	98-2-0001 96-2-0035 96-2-0017 96-2-0016 95-2-0082 95-2-0078 95-2-0067 92-2-0001
Ecology, Department of	99-2-0005 98-2-0002 97-2-0002 96-2-0010
Ferndale, City of	01-2-0011
Friday Harbor, Town of	01-2-0026 98-2-0003 96-2-0020
Island County	02-2-0004 00-2-0054 00-2-0001 98-2-0023c 97-2-0064 95-2-0072 95-2-0063
Jefferson County	01-2-0015 01-2-0014 00-2-0019 98-2-0018 98-2-0017 95-2-0066 94-2-0017 94-2-0006
La Center, City of	95-2-0067

RESPONDENT	CASE
La Conner, Town of	98-2-0002 94-2-0021
Lewis County	02-2-0007 01-2-0010c 00-2-0031c 00-2-0007 99-2-0027c 98-2-0004 98-2-0011c 98-2-0004
Magnano, John	92-2-0001
Mason County	01-2-0025 00-2-0030 96-2-0023c 95-2-0073
Mount Vernon, City of	98-2-0012 98-2-0006
Nutley, Busse	92-2-0001
Oak Harbor, City of	97-2-0061 96-2-0002
Olympia, City of	95-2-0069
Pacific County	99-2-0019 98-2-0024 96-2-0010 95-2-0076
Port Townsend, City of	96-2-0029
Ridgefield, City of	95-2-0067
San Juan County	02-2-0008 02-2-0001 01-2-0006c 00-2-0062c 00-2-0053 00-2-0016 99-2-0010c 99-2-0008 97-2-0006 95-2-0081
Sequim, City of	01-2-0021
Shelton, City of	98-2-0005 96-2-0014
Skagit County	02-2-0012c 02-2-0009 01-2-0022 01-2-0004c 01-2-0002 00-2-0049c

RESPONDENT	CASE
Skagit County	00-2-0048c 00-2-0047c 00-2-0046c 00-2-0033c 99-2-0039c 99-2-0016 99-2-0015 99-2-0012 99-2-0011 98-2-0016 98-2-0007 97-2-0060c 96-2-0036 96-2-0032 96-2-0025c 95-2-0075 95-2-0065
Sequim, City of	01-2-0021
Sturdevant, Dave	92-2-0001
Thurston County	00-2-0003 94-2-0019 94-2-0007
Tumwater, City of	94-2-0002
Vancouver, City of	01-2-0023 99-2-0038 97-2-0005 96-2-0017 95-2-0067
Washougal, City of	99-2-0042 95-2-0067
Whatcom County	02-2-0002 00-2-0052 00-2-0011 00-2-0002 99-2-0033 98-2-0025 97-2-0062 97-2-0030 96-2-0008 95-2-0071 94-2-0013 94-2-0009 94-2-0003 94-2-0001 93-2-0001
Yacolt, City of	95-2-0067

APPENDIX A - GLOSSARY OF ACRONYMS

ADU	Accessory Dwelling Units
AMIRD	Areas of More Intense Rural Development
APA	Administrative Procedures Act
ARA	Aquifer Recharge Areas
BAS	Best Available Science
BMP	Best Management Practice
BOCC	Board of County Commissioners
CA	Critical Area
CAO	Critical Areas Ordinance
CARA	Critical Aquifer Recharge Area
CFE	Capital Facilities Element
CO	Compliance Order
CP	Comprehensive Plan
CPP	Countywide Planning Policy
CTED	Community, Trade & Economic Development, Department of
DOE	Department of Ecology
DNS	Determination of Nonsignificance
DR	Development Regulation
EIS	Environmental Impact Statement
EPF	Essential Public Facility
FCC	Fully Contained Community
FDO	Final Decision and Order
FEIS	Final Environmental Impact Statement
FFA	Frequently Flooded Area
FWH	Fish and Wildlife Habitat Conservation Areas (FWHCA)
GHA	Geologically Hazardous Area
GMA, Act	Growth Management Act
GMHB	Growth Management Hearings Board
HMP	Habitat Management Plan
ILA	Interlocal Agreement
ILB	Industrial Land Bank
IUGA	Interim Urban Growth Area
LAMIRD	Limited Areas of More Intensive Rural Development
LOS	Level of Service
LUPP	Lands Useful for Public Purposes
MCPP	Multi-County Planning Policies
MPR	Master Planned Resort
MO	Motion Order
NRL, RL	Natural Resource Land, Resource Land
OFM	Office of Financial Management
PFR	Petition for Review
PHS	WA Dept. of Fisheries and Wildlife Priority Species and Habitat Manual
PUD	Planned Unit Development
RAID	Rural Areas of Intense Development
RO	Reconsideration Order
SCS	Soil Conservation Service
SEPA	State Environmental Policy Act
SMA	Shoreline Management Act
SMP	Shoreline Master Program
TDR	Transfer of Development Rights
TMZ	Traffic Management Zone
UGA	Urban Growth Area

APPENDIX B - GMA LEGISLATIVE HISTORY

1990
Laws of 1990, 1st Ex. Sess., ch. 17

1991
Laws of 1991, ch. 322
Laws of 1991, Sp. Sess., ch. 32

1992
Laws of 1992, ch. 207
Laws of 1992, ch. 227

1993
Laws of 1993, Sp. Sess., ch. 6
Laws of 1993, ch. 478

1994
Laws of 1994, ch. 249
Laws of 1994, ch. 257
Laws of 1994, ch. 258
Laws of 1994, ch. 273
Laws of 1994, ch. 307

1995
Laws of 1995, ch. 49
Laws of 1995, ch. 190
Laws of 1995, ch. 347
Laws of 1995, ch. 377
Laws of 1995, ch. 378
Laws of 1995, ch. 382
Laws of 1995, ch. 399
Laws of 1995, ch. 400

1996
Laws of 1996, ch. 167
Laws of 1996, ch. 239
Laws of 1996, ch. 325

1997
Laws of 1997, ch. 382
Laws of 1997, ch. 402
Laws of 1997, ch. 429

1998
Laws of 1998, ch. 112
Laws of 1998, ch. 171
Laws of 1998, ch. 249
Laws of 1998, ch. 286
Laws of 1998, ch. 289

1999
Laws of 1999, ch. 315

2000
Laws of 2000, ch. 36
Laws of 2000, ch. 196

2001
Laws of 2001, 2nd sp. Sess., ch. 12
Laws of 2001, ch. 326

2002
Laws of 2002, ch. 68
Laws of 2002, ch. 212
Laws of 2002, ch. 154
Laws of 2002, ch. 320
Laws of 2002, ch. 306

APPENDIX C - COURT DECISIONS

2002

Each case listed contains the following:
Case Name, Case Number, Wash Cite (*if available)*, Pacific Reporter Cite (*if available)*, WL Cite (*if there is no Pacific Reporter cite)*, LEXIS Cite.

***Indicates that the case is already listed in the digest, but this list has the correct citations.

Timberlake Christian Fellowship v. King County, (NO. 49824-0-I), 2002 WL 31117270 (Wash.App. Div. 1, Sep 23, 2002), 2002 Wash. App. LEXIS 2387, September 23, 2002, Filed.

City of Burien v. Central Puget Sound Growth Management Hearings Bd., (NO. 27560-1-II), 53 P.3d 1028 (Wash.App. Div. 2, Sep 13, 2002), 2002 Wash App. LEXIS 2218, September 13, 2002, Filed.

Chelan County v. Nykreim, (NO. 71067-8), 146 Wash.2d 904, 52 P.3d 1 (Wash., Jul 25, 2002), 2002 Wash. LEXIS 481, January 17, 2002, Argued, July 25, 2002, Filed.

Isla Verde Intern. Holdings, Inc. v. City of Camas, (NO. 69475-3), 146 Wash.2d 740, 49 P.3d 867 (Wash., Jul 11, 2002), 2002 Wash. LEXIS 468, July 11, Filed.

Holbrook, Inc. v. Clark County, (NO. 27216-4-II), 112 Wash.App. 354, 49 P.3d 142 (Wash.App. Div. 2, Jun 28, 2002), 2002 Wash. App. LEXIS 1493, June 28, 2002, Filed.

Mossano v. Kitsap County, (NO. 26696-2-II), 112 Wash.App. 1029, 2002 WL 1398059 (Wash.App. Div. 2, Jun 28, 2002), 2002 Wash. App. LEXIS 1498, June 28, 2002, Filed.

Manke Lumber Co., Inc. v. Central Puget Sound Growth Management Hearings Bd., (NO. 26580-0-II), 111 Wash.App. 1041, 2002 WL 1004187 (Wash.App. Div. 2, May 17, 2002), 2002 Wash. App. LEXIS 1764 May 17, 2002, Decided. UNPUBLISHED OPINION, Reported in Full-text Format at: 2002 Wash. App. LEXIS 1161.

Manke Lumber Co., Inc. v. Central Puget Sound Growth Management Hearings Bd., (NO. 26580-0-II), 53 P.3d 1011 (Wash.App. Div. 2, May 17, 2002), 2002 Wash. App. LEXIS 1161, May 17, 2002, Filed. The Publication Status of this Document has been Changed by the Court from Unpublished to Published June 20, 2002. As Modified June 20, 2002.

Daines v. Spokane County, (NO. 20322-1-III), 111 Wash.App. 342, 44 P.3d 909 (Wash.App. Div. 3, Apr 23, 2002), 2002 Wash. App. LEXIS 682, April 23, 2002, Filed.

Montlake Community Club v. Central Puget Sound Growth Management Hearings Bd., (NO. 46708-5-I), 110 Wash.App. 731, 43 P.3d 57 (Wash.App. Div. 1, Apr 01, 2002), 2002 Wash. App. LEXIS 535, April 1, 2002, Filed, Order Denying Motion for Reconsideration July 17, 2002, Reported at: 2002 Wash. App. LEXIS 1731.

Garrett v. Western Washington Growth Management Hearings Bd., (NO. 47418-9-I), 110 Wash.App. 1070, 2002 WL 454546 (Wash.App. Div. 1, Mar 25, 2002), 2002 Wash. App. LEXIS 491, March 25, 2002, Filed. UNPUBLISHED OPINION.

Grant County Fire Protection Dist. No. 5 v. City of Moses Lake, (NO. 70090-7, 70499-6), 145 Wash.2d 702, 42 P.3d 394 (Wash., Mar 14, 2002), 2002 Wash. LEXIS 178, March 20, 2001, Oral Argument, March 14, 2002, Filed.

Grandmaster Sheng-Yen Lu v. King County, (NO. 47647-5-I), 110 Wash.App. 92, 38 P.3d 1040, 2002 Wash. App. LEXIS 148, January 28, 2002, Filed.

Jensen v. City of Everett, (NO. 47077-9-I), 109 Wash.App. 1048, 2001 WL 1637744 (Wash.App. Div. 1, Dec 17, 2001), 2001 Wash. App. LEXIS 2749, December 17, 2001, Filed. UNPUBLISHED OPINION.

Wilma v. Stevens County Convassing Bd., (NO. 17354-2-III), 109 Wash.App. 1042, 2001 WL 1572433 (Wash.App. Div. 3, Dec 11, 2001), 2001 Wash. App. LEXIS 2692, December 11, 2001, Filed. UNPUBLISHED OPINION.

******North Kitsap Coordinating Council v. Kitsap County*, (NO. 46624-1-I), 108 Wash.App. 1028, 2001 WL 1155774 (Wash.App. Div. 1, Oct 01, 2001), 2001 Wash. App. LEXIS 3009, October 1, 2001, Decided, Reported in Full-Text Format at: 2001 Wash. App. LEXIS 2232.

******The Cooper Point Ass'n v. Thurston County*, (NO. 26425-1-II), 108 Wash.App. 429, 31 P.3d 28 (Wash.App. Div. 2, Sep 14, 2001), 2001 Wash. App. LEXIS 2082, September 14, 2001, Filed, Review or Rehearing granted: 2002 Wash. LEXIS 203, April 2, 2002.

Alberg v. King County, (NO. 44893-5-I, 45554-1-I, 45951-1-I), 108 Wash.App. 1005, 2001 WL 1011935 (Wash.App. Div. 1, Sep 05, 2001), 2001 Wash. App. LEXIS 2083, September 4, 2001, Filed. UNPUBLISHED OPINION. Petition for Review Denied June 4, 2002, Reported at: 2002 Wash. LEXIS 352.

Sammamish Community Council v. City of Bellevue, (NO. 47252-6-I, 47786-2-I), 108 Wash.App. 46, 29 P.3d 728 (Wash.App. Div. 1, Aug 20, 2001), 2001 Wash. App. LEXIS 1957, August 20, 2001, Filed, Petition for Review Denied April 2, 2002, Reported at: 2002 Wash. LEXIS 239.

Citizens for Natural Habitat v. City of Lynnwood, (NO. 46524-4-I), 107 Wash.App. 1054, 2001 WL 950827 (Wash.App. Div. 1, Aug 20, 2001), 2001 Wash. App. LEXIS 1985, August 20, 2001, Filed. UNPUBLISHED OPINION. Reported in Table Case Format at: 2001 Wash. App. LEXIS 3414.

Bernert v. Kitsap County, (NO. 26248-7-II), 107 Wash.App. 1045, 2001 WL 898735 (Wash.App. Div. 2, Aug 10, 2001), 2001 Wash. App. LEXIS 1886, August 10, 2001, Filed. UNPUBLISHED OPINION. Reported in Table Case Format at: 2001 Wash. App. LEXIS 3380.

STAT v. Clark County, (NO. 26067-1-II), 107 Wash.App. 1045, 2001 WL 898758 (Wash.App. Div. 2, Aug 10, 2001), 2001 Wash. App. LEXIS 1889, August 10, 2001, Filed. UNPUBLISHED OPINION. Petition for Review Denied March 5, 2002, Reported at: 2002 Wash. LEXIS 167. Reported in Table Case Format at: 2001 Wash. App. LEXIS 3379.

******Somers v. Snohomish County*, (NO. 41710-0-I), 105 Wash.App. 937, 21 P.3d 1165 (Wash.App. Div. 1, Apr 23, 2001), 2001 Wash. App. LEXIS 836, April 23, 2001, Filed.

***Citizens for Responsible and Organized Planning (CROP) v. Chelan County*, (NO. 17795-5-III), 105 Wash.App. 753, 21 P.3d 304 (Wash.App. Div. 3, Apr 10, 2001), 2001 Wash. App. LEXIS 586, April 10, 2001, Filed.

***MOAB Irr. Dist. No. 20 v. State Boundary Review Bd. for Spokane County*, (NO. 19186-9-III), 105 Wash.App. 1029, 2001 WL 293137 (Wash.App. Div. 3, Mar 27, 2001), 2001 Wash. App. LEXIS 1221, March 27, 2001, Decided, DECISION WITHOUT PUBLISHED OPINION.

***Lane v. Central Puget Sound Growth Management Hearings Bd.*, (NO. 46773-5-I), 105 Wash.App. 1016, 2001 WL 244384 (Wash.App. Div. 1, Mar 12, 2001), 2001 Wash. App. LEXIS 1025, March 12, 2001, Decided, DECISION WITHOUT PUBLISHED OPINION.

Wells v. Whatcom County Water Dist. No. 10, (NO. 47262-3-I), 105 Wash.App. 143, 19 P.3d 453 (Wash.App. Div. 1, Mar 05, 2001), 2001 Wash. App. LEXIS 370, March 5, 2001, Filed.

Ahmann-Yamane, LLC v. Tabler, (NO. 19204-1-III), 105 Wash.App. 103, 19 P.3d 436 (Wash.App. Div. 3, Mar 01, 2001); 2001 Wash. App. LEXIS 345, March 1, 2001, Filed, Petition for Review Denied September 5, 2001, Reported at: 2001 Wash. LEXIS 586. Order Correcting Opinion April 3, 2001.

***Moore v. Whitman County*, (NO. 69053-7), 143 Wash.2d 96, 18 P.3d 566 (Wash., Feb 22, 2001), 2001 Wash. LEXIS 140, June 2, 2000, Argued, February 22, 2001, Filed.

2001

North Kitsap Coordinating Council v. Kitsap County, No. 46624-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 2001 WL 1155774, 2001 Wash. App. LEXIS 2232; October 1, 2001, Filed; UNPUBLISHED OPINION.

Cooper Point Association v. Thurston County, No. 26425-1-II, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 108 Wn. App. 429, 31 P.3d 28; September 14, 2001, Filed.

Sammamish Community Council v. City of Bellevue, Nos. 47252-6-I, 47786-2-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 108 Wn. App. 46, 29 P.3d 728; August 20, 2001, Filed.

Abercrombie v. Chelan County, No. 19641-1-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, 2001 WL 772495, 2001 Wash. App. LEXIS 1487; July 10, 2001, Filed; UNPUBLISHED OPINION; September 11, 2001, Order Granting Motion for Extension and Order Denying Motion for Reconsideration.

Somers v. Snohomish County, No. 41710-0-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 105 Wn. App. 937, 21 P.3d 1165; April 23, 2001, Filed; Reconsideration Denied June 5, 2001.

Citizens for Responsible and Organized Planning v. Chelan County, No. 17795-5-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, 105 Wn. App. 753, 21 P.3d 304; April 10, 2001, Filed.

Moab Irrigation District v. Washington State Boundary Review Board for Spokane County, No. 19186-9-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, 2001 WL 293137, 2001 Wash. App. LEXIS 492; March 27, 2001, Filed; UNPUBLISHED OPINION.

Lane v. Central Puget Sound Growth Management Hearings Board, No. 46773-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 2001 WL 244384, 2001 Wash. App. LEXIS 425; March 12, 2001, Filed; UNPUBLISHED OPINION.

Moore v. Whitman County, No. 69053-7, SUPREME COURT OF WASHINGTON, 143 Wn.2d 96; 18 P.3d 566; 2001 Wash. LEXIS 140, September 26, 2000, Argued, February 22, 2001, Filed, As Corrected February 26, 2001.

2000

Scott v. City of Seattle, No. 44704-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 103 Wn. App. 1059; 2000 Wash. App. LEXIS 2559, December 26, 2000, Filed.

King County v. Central Puget Sound Growth Management Hearings Board, (Green Valley), No. 68284-4, SUPREME COURT OF WASHINGTON, 142 Wn.2d 543; 14 P.3d 133; 2000 Wash. LEXIS 834, May 31, 2000, Oral Argument, December 14, 2000, Filed

Faben Point Neighbors v. City of Mercer Island, No. 44847-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 102 Wn. App. 775; 11 P.3d 322; 2000 Wash. App. LEXIS 1602, August 28, 2000, Filed.

Stewart v. Review Bd., No. 42041-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 100 Wn. App. 165; 996 P.2d 1087; 2000 Wash. App. LEXIS 1382, August 3, 2000, Filed

Wenatchee Sportsmen Association v. Chelan County, NO. 67785-9, SUPREME COURT OF WASHINGTON, 141 Wn.2d 169; 4 P.3d 123; 2000 Wash. LEXIS 472, November 18, 1999, Oral Argument, July 20, 2000, Filed

Association of Rural Residents v. Kitsap County, NO. 68027-2, SUPREME COURT OF WASHINGTON, 141 Wn.2d 185; 4 P.3d 115; 2000 Wash. LEXIS 473, November 18, 1999, Oral Argument, July 20, 2000, Filed

Wells v. Western Washington Growth Management Hearings Board, No. 43028-9-I linked with: No. 43397-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 100 Wn. App. 657; 997 P.2d 405; 2000 Wash. App. LEXIS 583, April 10, 2000, Filed.

Manke Lumber Co. v. Central Puget Sound Growth Management Hearings Board, No. 23599-4-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 2000 Wash. App. LEXIS 356, March 3, 2000, Filed. (Unpublished Opinion at, 99 Wn. App. 1050)

Caswell v. Pierce County, No. 41882-3-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 99 Wn. App. 194; 992 P.2d 534; 2000 Wash. App. LEXIS 163, January 31, 2000, Filed.

1999

New Castle Investments v. City of LaCenter, No. 23954-0-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 98 Wn. App. 224; 989 P.2d 569; 1999 Wash. App. LEXIS 064, December 10, 1999, Filed

City of Des Moines v. Puget Sound Regional Council, No. 43100-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 98 Wn. App. 23; 988 P.2d 27; 1999 Wash. App. LEXIS 1940, November 15, 1999, Filed

City of Des Moines v. Puget Sound Regional Council, No. 42306-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 97 Wn. App. 920; 988 P.2d 993; 1999 Wash. App. LEXIS 1943, November 15, 1999, Filed

Clark County Citizens United, Inc. v. Clark County Natural Resources Council, NO. 68105-8, SUPREME COURT OF WASHINGTON, 139 Wn.2d 1002; 989 P.2d 1136; 1999 Wash. LEXIS 782, November 2, 1999, Decided

King County v. Central Puget Sound Growth Management Hearings Board, (Bear Creek) No. 66904-0, SUPREME COURT OF WASHINGTON, 138 Wn.2d 161; 979 P.2d 374; 1999 Wash. LEXIS 434, January 14, 1999, Oral Argument, June 10, 1999, Filed, As Amended by Order of the Supreme Court September 22, 1999, Reported at: 1999 Wash. LEXIS 636. Reconsideration Granted September 22, 1999.

Buckles v. King County, No. 98-35270, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 191 F.3d 1127; 1999 U.S. App. LEXIS 21612; 99 Cal. Daily Op. Service 7504, July 15, 1999, Argued and Submitted, Seattle, Washington, September 10, 1999, Filed

City of Bellevue v. East Bellevue Community Council, No. 67157-5, SUPREME COURT OF WASHINGTON, 138 Wn.2d 937; 983 P.2d 602; 1999 Wash. LEXIS 625, May 20, 1999, Oral Argument Date, September 9, 1999, File.

Honesty in Environmental Analysis & Legislation v. CPSGMHB, No. 40939-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 96 Wn. App. 522; 979 P.2d 864; 1999 Wash. App. LEXIS 1112, June 21, 1999, Filed

Duwamish Valley Neighborhood Preservation Coalition v. CPSGMHB, No. 41523-9-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 97 Wn. App. 98; 982 P.2d 668; 1999 Wash. App. LEXIS 1545, August 23, 1999, Filed, PUBLISHED IN PART

Diehl v Mason County, No. 22540-9-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 94 Wn. App. 645; 972 P.2d 543; 1999 Wash. App. LEXIS 429, March 5, 1999, Filed

Glenrose Community Ass'n v. City of Spokane, No. 16822-1-III, COURT OF APPEALS OF WASHINGTON, DIVISION THREE, PANEL EIGHT, 93 Wn. App. 839; 971 P.2d 82; 1999 Wash. App. LEXIS 472, February 4, 1999, Filed, As Amended by Order of the Appellate Court February 26, 1999; Reported at: 971 P. 2d 82; 1999 Wash. App. LEXIS 436.

1998

Gastineau v. City of Bothell, No. 42979-5-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 1998 Wash. App. LEXIS 1785, December 28, 1998, Filed. (Decision without Published Opinion at, 93 Wn. App. 1045; 1998 Wash. App. LEXIS 2102)

King County v. CPSGMHB, No. 66904-0, SUPREME COURT OF WASHINGTON, 136 Wn.2d 1020; 969 P.2d 1063; 1998 Wash. LEXIS 896, November 12, 1998, Filed, DECISION WITHOUT PUBLISHED OPINION

Litowitz v. Central Puget Sound Growth Management Hearings Board, No. 40399-1-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 93 Wn. App. 66; 966 P.2d 422; 1998 Wash. App. LEXIS 1567, November 9, 1998, Filed

Project For Informed Citizens v. Columbia County, No. 21054-1-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 92 Wn. App. 290; 966 P.2d 338; 1998 Wash. App. LEXIS 1295, September 4, 1998, Filed,

King County v. Central Puget Sound Growth Management Hearings Board, No. 39333-2-I, NO. 39914-4-I, No. 40310-9-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 91 Wn. App. 1; 951 P.2d 1151; 1998 Wash. App. LEXIS 344, March 2, 1998, Filed, As Modified August 6, 1998.

City of Redmond v. Central Puget Sound Growth Management Hearings Board, No. 65863-3, SUPREME COURT OF WASHINGTON, 136 Wn.2d 38; 959 P.2d 1091; 1998 Wash. LEXIS 575, August 6, 1998, Filed

Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, No. 64798-4, SUPREME COURT OF WASHINGTON, 135 Wn.2d 542; 958 P.2d 962; 1998 Wash. LEXIS 473, June 25, 1998, Filed

1997

Citizens for Mount Vernon v. City of Mount Vernon, No. 63823-3, SUPREME COURT OF WASHINGTON, 133 Wn.2d 861; 947 P.2d 1208; 1997 Wash. LEXIS 814, May 20, 1997, Oral Argument, December 18, 1997, Filed

Hale v. Island County, No. 39223-9-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 88 Wn. App. 764; 946 P.2d 1192; 1997 Wash. App. LEXIS 1897, November 17, 1997, Filed

Clean v. City of Spokane, 65262-7, SUPREME COURT OF WASHINGTON, 133 Wn.2d 455; 947 P.2d 1169; 1997 Wash. LEXIS 736, June 18, 1997, Oral Argument, November 13, 1997, Filed

Children's Alliance v. City of Bellevue, No. C95-905Z, UNITED STATES DISTRICT COURT FORTHE WESTERN DISTRICT OF WASHINGTON, SEATTLE DIVISION, 950 F. Supp. 1491; 1997 U.S. Dist. LEXIS 287, January 8, 1997, Decided, January 8, 1997, FILED, ENTERED

1996

Postema v. Snohomish County, No. 37389-7-I, COURT OF APPEALS OF WASHINGTON, DIVISION ONE, 83 Wn. App. 574; 922 P.2d 176; 1996 Wash. App. LEXIS 356, September 9, 1996, FILED, Petition for Review Denied April 4, 1997, Reported at: 1997 Wash. LEXIS 176.

1995

Matson v. Clark County Board of Commissioners, No. 17452-9-II, COURT OF APPEALS OF WASHINGTON, DIVISION TWO, 79 Wn. App. 641; 904 P.2d 317; 1995 Wash. App. LEXIS 451, November 1, 1995, Filed

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